MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

CHAPTER 436 LEGISLATION MEETING

MISSOURI COUNCIL OF SCHOOL ADMINISTRATORS
3550 AMAZONAS DRIVE
JEFFERSON CITY, MISSOURI 65109

JULY 24, 2008
9:45 A.M. - 4:30 P.M.

CHAIRMAN: I guess we ought to get started here. We're going to call roll. Todd Mahn?

MR. MAHN: Here.

CHAIRMAN: Joy Gerstein?

MS. GERSTEIN: Here.

CHAIRMAN: Gary Fraker?

MR. FRAKER: Here.

CHAIRMAN: John McCulloch?

MR. McCULLOCH: Here.

CHAIRMAN: Martin Vernon?

MR. VERNON: Here.

CHAIRMAN: Okay. Good. Good. I'm going to introduce a few people before we start. I'd like to start with Representative Meadows.

MS. DUNN: He just walked out.

CHAIRMAN: Oh, he just walked -- well, we'll introduce him again when he comes back. David Broeker, Division director. We've had some fatalities, so we replaced Connie Clarkston with Jeana Groose. She's going to take -- and Connie Clarkston is the director of budget and legislation for the Division. Get that right. Kim Grinston, our attorney;

Becky Dunn; Lori Hayes; and Linda -- your last name?

MS. BOHRER: Bohrer? Me? Yeah, Bohrer. Sorry.

CHAIRMAN: Sorry about it. I can't get that pronounced.

MS. BOHRER: That's okay. Very common.

CHAIRMAN: It's like Reinhard, you can't spell it.

MS. BOHRER: Yeah, I know. I know.

CHAIRMAN: And she's the department director --

MS. BOHRER: For insurance --

CHAIRMAN: -- for insurance.

MS. BOHRER: And professional registration and financial institutions.

CHAIRMAN: And we appreciate having her here today.

MS. BOHRER: Thank you.

CHAIRMAN: What we're going to do is we're going to go around the table real quick and introduce ourselves, and just tell who you represent and what part of the country you're from.

(The members introduce themselves.)

CHAIRMAN: Thank you all for introducing yourselves. Now, we're going to go out to the public and we'll just start. Do you want to stand up real quick and we'll start out with you and just introduce yourselves.

(The members of the public audience introduce themselves.)

CHAIRMAN: I think that's everybody. Let me explain the rules of engagement here. The committee will take up a topic which Kim, our facilitator, will introduce. The committee will discuss the topic, but you've all heard about the Board members getting on me about some of the public speaking a little early, so we're going to try to keep that till the end, although I'm working with you guys. And then we'll call a vote on that particular topic, and then we'll move on to the next. Does that explain it pretty well? Everybody got what we're doing? Any questions?

MS. EULER: Do you want to talk about the red cards?

CHAIRMAN: Oh. The red cards are when you foul and you're out of the game. Okay.

No. If you want to speak on the committee, just hold your card up and we'll get to you. Yes, Joy? And Joy is just explaining how that works.

MS. GERSTEIN: Before we start, if I may, Marion, are you a past Board member?

MS. DUNN: Marion Watkins?

CHAIRMAN: Oh, yes. I should -- Marion Watkins is a past Board member, and I'm glad to have her here.

MS. WATKINS: Yeah. I served with Mr. Reinhard.

CHAIRMAN: And Mr. Lakin. We had some good times. Also, I do want to reiterate that Representative Meadows is here, and he has worked diligently with us and he's a great guy to work with, and we appreciate you being here and taking your time out of your schedule, so thank you, again.

REPRESENTATIVE MEADOWS: You bet, Mr. Chairman. Mr. Chairman, for the record, I won't be in attendance in the second half, but I may have someone sitting in for me; okay?

CHAIRMAN: Okay. That would be fine. So, I'm going to turn it over to Kim.

MS. DUNN: I just want to do a couple of housekeeping things.

CHAIRMAN: Oh, hold it. Oh, we've got housekeeping to take care of. Oh, okay. We do have a time limit, too. Like, when we have a topic and you get to discussing it, you know, we've got, like, a two-minute time limit.

MS. DUNN: I just wanted to make sure everybody signs the sign-in sheet in the audience and also in the roundtable because this is what we use for our minutes. For those that are new, we break at noon. We start up at 1:30. We'll usually work till 4:30 or 5:00. The meeting next week is Tuesday, so in case there is any confusion.

CHAIRMAN: Here.

MS. DUNN: Tuesday, here. Then we skip a week and then Tuesday again, and then we're at the Lake for our Board meeting. So, that's all on our Web site. We've added some updates to our Web site this week, so make sure everybody refers to our Web site if they need any information. So, that's all I have.

CHAIRMAN: All right. Kim?

MS. GRINSTON: Good morning, everyone.

We are going to -- of course, we'll go through our regular process as the Chairman explained, but I did want to explain one thing about this afternoon. We've been working back in the office, as we talked about last week, and trying to get the concepts that the group has discussed about discussed, put on paper, and incorporated into some language. We have come up with a very preliminary, very initial draft that we thought we would circulate later on today so that we can start, as we go through the final meetings, looking at actual language on paper. What you're going to be getting after lunch is not a final draft. It's not even a suggested draft. It really is the framework. We'd like everyone to take a look at it, to review it to see if it's in line with what you believe the committee discussed. We are taking all suggestions on language. This draft is meant to be crucified. I was reading through this morning and there are errors and things that are misplaced and everything else. And so, we tried to catch some of them, but because of the volume of what we were doing, there are some still in

there. And so, if you see anything, have any suggestions, have any comments, we are going to be giving you an e-mail address to e-mail it in to us, or your can call our legislative section. We are going to begin to weed it and bring in all the suggestions and all suggested language and try to iron it out so that by Tuesday you guys will have a better working draft to look at, and we'll be moving on from there. I think we are still on target to try to get these concepts on paper by the deadlines that we talked about, but, again, we would like everyone to please give us any and all suggestions. We will be in the office tomorrow, so if you see something tomorrow as you're going through that you could tell us, "Don't forget to fix this," or, you know, "This is an issue," please let us know. We understand -- we also have some suggestions that we have gotten from the Department of Insurance, as well, and those are going to be provided to you. Some of that language is going to be incorporated and merged into our draft. So, please look at those documents as a together document, if you

will, and we'll be looking at that, as well, for the committee's review. Anyone have any questions, of course, at any time, please give us a call. Some of it, if it doesn't read as well -- Mr. Chairman?

CHAIRMAN: Go ahead. Finish up.

MS. GRINSTON: If it doesn't read as well, just let us know.

CHAIRMAN: Linda?

MS. BOHRER: Kim, would it be possible for you to provide an electronic copy of that to the committee members?

MS. GRINSTON: Yes.

MS. BOHRER: I find it a whole lot easier to do a track change on an electronic document when I'm submitting recommendations and, that way, you can see what the old is, what the new is, as opposed to writing in on a paper document.

MS. DUNN: We'll be sending that out either -- probably tomorrow.

CHAIRMAN: Don?

MR. OTTO: Will we be able to tell the difference between the committee -- the working group's suggestions and what you just got from

the Department of Insurance?

MS. GRINSTON: Yes. Right now, they are two different documents. And so, when you get them together, you'll be getting them as two separate pages. One of the things that I did want to caution everybody about because this is something we talked about, and this is just my legal suggestion. Amending 436 and doing the bracketing bolding is almost impossible for the revisions that we're doing. So, what we have done, and this is our suggestion. We talked to Connie, who is at home sick today, but we talked to her about this suggestion, what we would like to do is just move the preneed section. And, again, this is opened up to suggestions of the group, to the end of Chapter 333, and just pull it out of -- or instead of going in and trying to amend -- fix 436, attach it to the back of 333, name it as the Preneed Funeral Consumers Act or something of that sort, and then start again from scratch. We are -- for legal purposes, we are going to have to make sure we preserve any rights so that we don't have anything that is unconstitutionally

retroactive or anything else. But we think that that may be a workable suggestion. Again, that's open for committee review. When you see it, it will have 333 in the section numbers. That's not a make-it-or-break-it deal. Just let me know what you think about the concept as you look at it and pulling it over, because if we go in bracketing and bolding and leaving in one part, it just may be too difficult, and it may be easier for us, legally, to just refer back to 436 instead of going through all the machinations and presenting the bill, but --

MS. DUNN: And, Don, based on your suggestion, and Linda, the two documents that you gave me today, can I get those electronic, too?

MR. OTTO: Yes.

MS. DUNN: Okay. Just so I can send them out to the members.

MR. STALTER: Make a suggestion, maybe, too, also. You know, this will be a process of making comments and responses to these proposals. And I don't know whether the members want to make those comments in public

or not. Maybe if they submit comments, they should state whether it could be shared with the group as a whole.

MS. GRINSTON: Yes. But since it's being submitted to the Division and the Board, if it comes in, it's an open record. And so, there would be no way you could request maybe not to have them incorporated in. But there would be no way, once we have them in our hands, not to share it upon the request of anyone. And so --

MR. STALTER: Share with everybody?

MS. GRINSTON: Yeah. If there is something that maybe you just want to call and mention to us, or if someone has something that you may not like to have in writing, but you did want to make a comment on, call the Budget and Legislation office, and we could probably talk to you about that if that's a concern. But if it comes in in writing -- and that's a good point, Bill -- please be advised that we will have to share that because it would be considered an open record and a State document.

MR. STALTER: And I think beyond that

is if we make comments, maybe it is that they will be shared. I mean, if I make comments, really, I'd kind of like them to be spread among all the members.

MS. GRINSTON: And so -- oh, I'm sorry. Yes. Everyone will see -- the working group will see all comments that have come in. And maybe we can talk about how you want to do that. Connie is not here today. Maybe we can talk about whether you want those -- to get them as they come in. Do you want us to submit them in a package. I don't want you guys to keep getting big e-mails from me, or, you know, from the office. But we can figure out a way to make sure you guys are seeing the comments as they come in, as well. I think I misunderstood your question, Bill. Sorry.

MR. STALTER: Well, I haven't gotten any e-mails from you. Have you been sending out e-mails?

MS. GRINSTON: You know, you wouldn't like my e-mail.

MR. STALTER: I know.

CHAIRMAN: Mike?

MR. MEIERHOFFER: This is going to be through e-mail; right? You're going to be sending us e-mails --

MS. GRINSTON: Yes.

MR. MEIERHOFFER: -- that we can --

MS. DUNN: We'll distribute that after lunch. We'll have Connie Clarkston's e-mail and we'll have her fax number.

MS. GRINSTON: And if anyone needs a hard copy or needs to be working off a hard copy for any reason, let us know. We can make sure that you get hard copies or fax them to you if we need to. The document right now, so it doesn't scare anybody, it is double spaced, the lines are numbered, and everything else, so it looks much larger than what it really is, and it's in a larger font just for ease of reading. So, please, I hope it doesn't scare anyone, but it is -- right now, it's about a 40-page document. When we incorporate what you discuss today and some of the other changes and recommendations that have come in, it's going to get longer. So, just know that for purposes of faxing, it's going to be a large document if you need a

document faxed, so -- having said that, I know that today -- at the end of the last meeting, we said that we were going to revisit some of the larger 436 issues, such as trusting, portability, refunding, and issues of that nature. What I would like to do before we do that, if we can get a few smaller points sort of taken care of, that would help us, and then we'll have as much time as we need to discuss the issues. Having said that, #40 on the agenda -- #40 and #41, if we could start there before we jump into some of the bigger stuff, if that's okay. Number 40 and #41 are pretty much almost the similar suggestions. In some of the 436 issues and discussions we have had, a suggestion has been submitted to the Board that the State of Missouri or that 436, the preneed law, require either standard forms or require some type of form approval by the Board or some other entity before using a preneed contract. I know that this slightly came up last week when we talked about, you know, preneed contracts and some of the structure issues. And so, I'd like to open the discussion with the topic of whether or if

there is a need, should there be any changes to require standard forms, to require some type of form approval or other form filing with the Board if you are using or writing a preneed contract. Having said that, Mr. Chairman?

CHAIRMAN: Discussion? Josh?

MR. SLOCUM: I think that it would be an excellent idea for the State to develop one or two standardized preneed contracts. Obviously, you would have to take into account the various different kinds of funeral-arrangement services that are available. But I think the benefit of that would be this could incorporate -- and I think the most important point for the consumer -- because, remember, this really is for the consumer -- to have it done in absolute plain English without jargon, explaining what their rights are, perhaps, in a simple bulleted format. This is what's guaranteed, this is what's not price guaranteed. This is what happens if you move, and these are your options. And if you need a model for that, the Texas Insurance Department has a

standardized preneed contract and consumer disclosure that is written in plain English and covers the bases pretty well, so for your information.

CHAIRMAN: Sharon?

MS. EULER: I think it makes a lot of sense to have some form disclosure language because we have talked in previous weeks about doing some consumer disclosures, and I think it makes some sense to do that. But as the far as the contract itself, it seems to me that each individual funeral home should be legally responsible for their own contract, because if the State develops the form and there's a problem with it, then the State is on the hook for creating those legal problems, and I think each funeral home should bear that risk.

MS. GRINSTON: Yeah. We don't like to put the State on the hook.

CHAIRMAN: Mike?

MR. MEIERHOFFER: Along that line, if I recall, the GPLs that are required by the FTC, the Federal Trade Commission, have language, but they don't give us a specific form to use.

And I agree with you wholeheartedly, Sharon. I think that we can have some guidelines, but the legal jargon needs to be put together by individual companies because they're going to stand the responsibility for the contract if it doesn't work.

MR. STALTER: Well, you know, I can't get my clients to agree on a contract form. I mean, if you guys could do it. But looking at what other states do -- Iowa, for instance -- I mean, standard disclosures. Texas does some. But getting -- you know, you can require that by either statute or regulation. That would be very helpful, getting across clear language to consumers, so --

CHAIRMAN: Public, since I don't see any more committee discussion. Public members?

MR. SPEAKS: Brad Speaks, for the record. I wonder if a combination of Mr. Slocum's suggestions and Sharon's suggestions could be practical because I agree with what Mike is saying, you know, the FTC mandates certain language, but how we put that language together into our GPLs is up to us. Would it be acceptable, I think, maybe, to the consumer

to have certain mandated disclosures that funeral homes put together in their own format on the contracts because the point being made, well, I'm the one that's ultimately legally responsible, you know, I would like to have my own legal counsel develop that. And if I'm taking -- if I'm on the hook for it, I want to have a hand in it, but I'm not sure the two ideas are mutually exclusive, so --

MS. GRINSTON: So, what I'm hearing is a hybrid idea, mandatory disclosures, but not a standard form that would be required to be used by everyone. Mandatory disclosures, put them in your contract, allow you the flexibility to incorporate other forms. If we do that suggestion, I would legally suggest that we have language in the statute that says no form can include any language which modifies or restricts any right granted by the preneed law, just so that we make sure that we don't -- you don't have a disclosure in another contract that pretty much writes out the protection of the law, but some states are doing it that way; there is not a standard form. And that wouldn't stop the Board from

-- and maybe this is something else I'd like to throw out for suggestion purposes from having a suggested format that may not be mandatory, but that would be sort of like the GPL, but that would be an example.

CHAIRMAN: Sure.

MS. DUNN: We do something like that right now on other things.

MS. GRINSTON: Yeah.

CHAIRMAN: Sharon?

MS. EULER: I do think it makes sense to include in the statute things that the contract must require -- must require certain signatures, must require, you know, the itemization, and require those things, but not do the specific legally binding language.

MR. OTTO: Well, in theory, I like the idea of one standard contract, as long as I was the one that got to write it. And I think the problem is everybody else will say the exact same thing.

MR. MEIERHOFFER: We wouldn't want to put the lawyers out of business.

CHAIRMAN: Any more comments? Kim, you wanted to explain? Oh, Mary?

MS. ERICKSON: I have a suggestion. I agree with the discussion that Sharon has shared so far, but with regards to the disclosures in the proposed statute, we might make it specific regarding the size, the font type, et cetera, of the disclosures. A lot of other consumer-protection laws have those kind of requirements that, mind you, it can't be in, you know, .7 Ariel that nobody can read. And I think that would be a reasonable way for all of the funeral homes to know exactly how it should look in their contract.

MS. GRINSTON: And some of the other states do have language that says 12-point font, you know, nothing less than 11-point font, or something of the sort. So, if I can bring this together, if I may. Am I hearing the consensus of the group is, no required standard form, but standard disclosures, and then we'll talk about what some of those disclosures and contract-format requirements should be?

CHAIRMAN: Committee, all in favor? Opposed?

(Unanimous voice vote for approval.)

MR. MEIERHOFFER: The only comment to that whole thing is realize that you've got to try to work within the framework of legal paper or something and not end up with a ream of paper for this. We don't want to make this overly complex or complicated. It's so much easier if you get it on one page or at least on one and the back, because you're going to have duplicates and all that stuff, and the more pages you have, the harder it is to do, not that it's impossible.

MS. GRINSTON: Yeah. Well, it makes sense, and also from the consumer standpoint, you know, if it's so big, I've got a 50-page contract or a 45-page contract, I'm going to stop reading at page 3.

MR. MEIERHOFFER: Or 2.

MS. GRINSTON: Or 2 or paragraph 1, depending on your attention span; right. Okay. So, if I hear not a standard form, but standard disclosures, can we talk about what some of those disclosures should be? And I do have some suggestions in the draft that you will see later on this afternoon that included some of the things that you mentioned in the

discussions earlier. But if we could take suggestions on some of the things that need to be disclosed in the contract if there's going to be suggested and mandatory consumer-disclosure requirements.

CHAIRMAN: Any comments? Don?

MR. OTTO: Well, I think we're going to have to reach a consensus or a not consensus on some of the big issues because -- before we --

MS. GRINSTON: Can we reserve that on funding and, you know, trusting, and portability and some of those other issues --

MR. OTTO: Those are the ones that need to be disclosed.

MS. GRINSTON: They do, but then there are other things like the signatures. Are you going to require the signatures? Are you going to require name and address on the contract? Are you going to require, you know, notification that the State Board takes complaints? Are you going to require font size? Are you going to require -- some of those issues? Are you going to require disclosure of guaranteed versus nonguaranteed?

Are you going to require disclosure of revocable versus irrevocable? Will you require disclosure of insurance funded versus trust funded versus joint funded, or just of the funding mechanism? I think there may be some issues because I think if we jump into trusting, it's going to tie up sort of that discussion a little bit. And then maybe when we get to trusting, some of those issues, Don, if we could come back and revisit the disclosures once we hear what the consensus of the group is on that issue.

CHAIRMAN: Sharon and then --

MS. EULER: I think we can all probably agree without having to decide the specifics that the consumer disclosure should include things like whether you have a right to counsel, whether you have a right to a refund, where your money is going to be without making the decision as to numbers, you know. What part of the money is yours or whose money is it, those sorts of consumer-friendly things that the folks I talk to want to know. What do they do if they move out of the area, those sorts of things.

CHAIRMAN: Are you done, Sharon?

MS. EULER: Uh-huh.

CHAIRMAN: Okay. Josh?

MS. SLOCUM: I agree with what Ms. Euler said. Regardless of what form the law takes in terms of trusting, I think the basic things that should be on there, how much money is deposited, what happens to the interest. Particularly, I speak to literally thousands of consumers every year, and they seriously misunderstand a lot of preneed contracts, and a lot of times, it's not the funeral home's fault necessarily, but the consumer has to be told very specifically these are my services and my goods that I'm guaranteeing to you; however, these are nonguaranteed cash-advance items. The price may go up on these. That's probably the number one source of nonlegitimate complaints that we get from consumers when the survivors come and say, "Mom said everything was taken care of," but the funeral homes says, "We have to pay $500 more for the flowers," and I've seen many instances where the contract could have been clearer. It wasn't the funeral home's fault,

but the consumer needs to be shown in bold type, "This is not price guaranteed." I have one suggestion, also, maybe for consideration later. Several states have short, sweet, trifold pamphlets that put consumer rights in very simple form. Perhaps something the State could develop would be a pamphlet that has the preneed rights, rights of transfer, rights of cancellation, right of complaint that is required to be given out with every preneed contract. Thank you

CHAIRMAN: Thank you, Josh. Linda?

MS. BOHRER: And we have that same type of disclosure document that's required on various lines of insurance, as well, and it seems to work in that process.

CHAIRMAN: Bill?

MR. STALTER: Yeah. I want to take this a little bit further. Well, you're off the hook. I can't see your name, but when we talk about insurance and, you know, go to the portability issue, you know, one of the sticking points is when the contract goes from one competitor to the other. And what we might look at is some kind of disclosure

specifically addressed, I mean, to that transfer issue and portability where, you know, it's -- you know, the consumer has -- you know, they just want to change funeral homes. And as long as they understand what they're -- you know, what they're giving up or what they're getting, you know, that's clearly disclosed for that particular transaction. And it may require just a separate type of disclosure document or statement. But for the funeral home's perspective is they just want -- you know, the funeral home who has the original contract would also like to know that it's being done under fair circumstances. I mean, if they're just losing a consumer because they've changed their mind, not because it's being twisted, you know, then they're also afforded some protections by that particular document.

CHAIRMAN: Don?

MR. OTTO: Everyone has what our kind of concept paper was to kind of maybe take care of some of these issues. But one of the things that was in that is to have some of the key things spelled out, like portability,

you know. What are your rights if you change -- you know, what happens if you change funeral home? What happens if you want to cancel; okay? You know, what happens if you change your mind -- spelled out. One thought was do that on a separate sheet of paper that the consumer signs so you know that they actually got that and it was given to them as opposed -- you might -- as you mentioned, these contracts are going to get so big with so much stuff that you could have a problem. And then the other comment I had was -- and I don't know -- throw this out. Is this something that should be in -- how much of this should be in the statute and how much of this should be rule making.

MS. GRINSTON: That was going to be my question, because -- and I think it's a very good point. When you do it by statute, you're locked in, and it will be required forever even if, you know, the term may be inapplicable. And we've seen some instances with 436 where there are things in statute -- this has even happened on 333. And a good example, and this is Don's issue, the back of

the death certificate, you know. It said back of the death certificate and when they took the signature off the back of a death certificate, we had to go in and amend a statute, which isn't easy, just because they moved it to the front of the page. And so, that was going to be my question: Should this be something spelled out in statute or should it be something relegated to the rule-making authority of the Board?

CHAIRMAN: Okay. Go ahead.

MR. MAHN: Well, this is a scenario: The family decides they want a prearranged. Example: There's two funeral homes in town, and they go shopping at both funeral homes. And they don't really know whether the funeral homes -- how -- what they use for an investment tool. One maybe is primarily insurance, the other one is trust. And for the family that selects the funeral home with insurance, all the things we're discussing here, there is no problem. It's 100-percent investment, total portable, there's no issues on, really, anything that we're, you know, discussing here. And I'm sort of asking a

question: Is this some of the reasons why some states only allow insurance? I mean, because it really seems like, you know, the family don't know. I mean, they go to a firm because they like them or whatever, but they're not -- you know, they don't know what they're using for an investment tool.

CHAIRMAN: Representative?

REPRESENTATIVE MEADOWS: I hear what he's saying. That's a pretty interesting point that he brings up, but I don't know how many states are out there that are presently doing that.

MS. GRINSTON: Insurance funding only?

REPRESENTATIVE MEADOWS: Yeah.

CHAIRMAN: Don, do you have an answer to that?

MR. OTTO: Well, I could -- try cashing in on an insurance policy, see how much you get back. Nothing. So -- and it's not 100 percent invested. MR. MAHN: I understand. I understand you can't --

MR. OTTO: And try to change insurance companies if the first insurance company is going out of business.

MR. MAHN: Right. Well, I understand cancellation, but most people I talk to in the history of the industry, even lay -- you know, people -- the public know because they've had to render insurance policies for life insurance. They're knowledgeable that at cancellation, they're going to get pennies back. They understand that. I'm primarily talking about portability.

MR. OTTO: Well, and with portability with an insurance policy with your funeral home, that might have been a guaranteed product. If you move that insurance policy to another funeral home, it's -- that second funeral home doesn't have to abide by the first prices.

MR. MAHN: No. No.

MR. OTTO: So, you still have the same problem there.

MR. MAHN: But they get 100 percent of the policy plus all the inflation of the policy, whereas if they move it out of, say, for instance, your trust, and it's a 25-year-old trust, they're only getting 80 percent of the original investment.

MR. OTTO: Under the current law, but --

MR. MAHN: Right.

MR. OTTO: -- it -- yeah.

MR. MAHN: And who keeps the interest?

MR. OTTO: Yeah.

CHAIRMAN: Josh, if you've got a comment, then Mike.

MR. SLOCUM: I don't want to -- I believe, unless somebody has more recent knowledge, I believe there's only one state, which is New Mexico, that has insurance only. And just in case anybody is wondering, when you get into it later, if you didn't get a chance to look at the handout I have, I have a chart here that ranks the states by their trusting requirements from top to bottom, so you may want to refer to that just to get a sense of where the other states are.

MS. GRINSTON: And that's outside. There are copies -- extra copies, if you need them, outside.

MR. SLOCUM: The form you get looks like this. It says "Funeral Consumers Alliance" on the front.

CHAIRMAN: Mike?

MR. MEIERHOFFER: Kind of back to the statement where we started, and that's regarding statute and rule making. I think we need to grab that one, too, because I think if the Board did have some ability to make some rules, it would make a lot of difference in terms of not only what we're doing now, but in the future what we do. So, I think that's something we really need to look at.

MS. GRINSTON: And I think, you know, we have in other areas, including, you know, in the insurance areas, while there are things that are mandatory in statute, and then there's something that says any other information determined by the Board by rule, or, you know, deemed necessary by the Board by rule. Would it be possible for us to try to compile the listing? And, again, I'm just talking by subject areas of some of the things, and also include language that allows some flexibility somewhere.

MR. MEIERHOFFER: I think that's extremely important.

MS. GRINSTON: So, we don't get locked

into the back of the death certificate, again.

CHAIRMAN: Representative?

REPRESENTATIVE MEADOWS: Thank you. Just to follow up on what Kim is saying, about one of the greatest things that we are trying to do for you all this past legislative session in the final week when it was crunch time was give you more rule-making authority so you can take care of these issues. And I offer that, and I think that maybe some of this does need to go back to, but I guess with one reservation that I might have. Often at times -- and I'm not criticizing anyone, not past boards or anything like that, but who knows what's going to happen in the future? You might get some people in that may want to change things, you know, and not everybody may not be all in favor of that. But I look around this existing Board, and I think you're all doing a great job and I want to give you all the tools that you need to be at your disposal, but -- you know what I'm saying? You know?

MS. GRINSTON: I do.

CHAIRMAN: Okay. Darlene?

MS. RUSSELL: I was just going to agree with what Kim was saying, that certain things should be mandatory -- the cancellation, the portability, those certain disclosures, and then the rest, just like you said, could be addressed in rule making. But the major -- the three or four major things, as Mr. Slocum pointed out, that confuse the consumer.

CHAIRMAN: Mike?

MR. MEIERHOFFER: I agree wholeheartedly with Representative Meadows, and I think one thing that could be done to maybe address that particular problem or concern is to maybe poll your marketplace, poll the members of our profession when you are making a rule so at least you have a flavor of the marketplace, what people are thinking before you enact that rule. So, you don't have to follow it, but at least you have an idea of what's out there before a rule is enacted, and then you find out retroactively.

CHAIRMAN: Don?

MR. OTTO: But what if it's just this simple: All contracts under whatever this is

now, 333 or 436, shall clearly disclose what items, if any, are guaranteed in price, what takes place should the consumer wish to change funeral homes or wish to cancel the contract in a format set by the Board per rule, and accept other disclosures as required by the Board in rule making.

MS. GRINSTON: But something I was going to add on, if I can, to what Don just said. You know, if the concern is, you know, making sure that a Board would stay in line with what 333 was intended to do, you could have something that guides the discretion of the Board, something that says, you know, anything set by the Board by rule, not inconsistent with the provisions of this chapter, and relating to consumer disclosure so that we do not have, you know, issues that are -- you know, that may not be -- I don't know, and this is not a suggestion. I'm just saying, is it an idea that we limit the Board's authority to consumer disclosures, or would you like it to be anything in the contract?

CHAIRMAN: Comment? A minute to think?

Public?

MR. KRAUS: Gerry Kraus, Homesteader's. The insurance regulators and the insurance industry went down this road quite a ways a number of years ago. The National Association of Insurance Commissioners develops model regulations for adoption in the states. And I can't tell you how many yours ago, but it developed a life-insurance solicitation model that included a section on appropriate preneed disclosures. And I can't tell you -- I don't have any Missouri insurance laws with me today. I think Missouri is among the states that have adopted them, but they have been adopted in the majority of the states, and it's a good framework of a dozen or so disclosures. It talks about making sure that the consumer understands what kind of funding they have, what happens if they want to make changes in the funding, what happens if they want to make changes in the provider, whether or not someone is taking some of the money, whether -- you know, like, a retainage or drawing down interest or receiving a

commission, those types of things. And most life-insurance transactions in the states that have adopted these models, those disclosures are already being provided by the life-insurance agent, and they would be a good starting point, and I'll make sure I get that list to the Board.

CHAIRMAN: Thank you, Gerry. Brad, did you have a comment?

MS. GRINSTON: Well, if that's the case, what I'm hearing is, I will, if it's okay with the group, develop a list of suggested disclosures, include rule-making authority of the Board, some of the issues we talked about today, and bring it back for you to take a look at, if that's okay. Seeing nods. Okay.

CHAIRMAN: All in favor, say aye. Those opposed?

(Unanimous voice vote for approval.)

MS. GRINSTON: Okay. Forty-three, I think we've already addressed and it probably should have been listed as completed, and I apologize for that. Number 47, if we can do that.

MR. MEIERHOFFER: Can I back up on that just a second?

MS. GRINSTON: I'm sorry.

MR. MEIERHOFFER: Do we know the difference between investigate, examine, and audit? Do we really know that? Is that defined?

MS. GRINSTON: I can tell you right now, not in 436, no.

MR. MEIERHOFFER: Well, I think that's something that goes back to rule making and everything else. If we have a definitive way of working through this process that the Board knows, that its going through this new, I think that would be important. I really think those -- I think that's a real key to what we're doing. And then we're also talking about finding people at some point in this field. And the question I would ask is when and how and how much, of course, and that's another -- we're at another story, but this is key to me.

MS. GRINSTON: What is an investigation? What is an exam?

MR. MEIERHOFFER: What is it and when

is it triggered? And when do we go to the examination and when do we go to the audit? We talk about audits being expensive and time-consuming. That would be the last phase, and there's a trip trigger for that.

MS. GRINSTON: I can tell you that one of the recommendations on that point from the department on the audit issue is that audits would be authorized with cause when there is a reason to believe. And one of the things that we looked at in looking at the drafting, you'll see this is maybe -- there should be a step 1, step 2, step 3, and audit would come if there are issues in an examination that show --

MR. MEIERHOFFER: Sure. Or you sell or something, or maybe when you sell or something of that nature.

MS. GRINSTON: Okay. I understand that. Would you like me to see if I can pull together some definitions of investigation, examination, and audit for you all to review as a group?

MR. MEIERHOFFER: I just think it would help your Board.

MS. GRINSTON: Okay.

MR. MEIERHOFFER: I just think it would help everybody understand where they stand.

MS. GRINSTON: Okay. And that's something -- I think it does get confused. This is Becky's frustration sometimes when people call in and say audit, audit, audit, you know. Audits are incredibly expensive and incredibly expansive. Examinations are something a little bit different. Even on the 333 side, we get questions on what's an inspection and what's an investigation, so I could pull that together for everyone to look at. Number 47, which goes to that next question, and I understand that there may be some other preliminary issues that we need to look at which we could also reconsider once we look at some of those definitions, but civil penalties and fines, as we talked about 436 and the authority of the Board, and I'll set this up from the Division framework. Right now, generally, the majority of the licensing boards do not have civil penalty and/or fine language. There have been some very strong

legal objections to granting the licensing boards civil penalties or civil-fine authority. We do have two boards -- a board and a commission -- that were recently granted civil penalties authority. That was through the disciplinary process. We have two other older autonomous boards that have civil-penalty language, but our understanding is that they have never used it. The groups that have it now at the Division are the Real Estate Commission and -- okay -- architects, professional engineers, land surveyors, and someone else. We call it APELS -- those people. APELS has it now and they have it as part of their disciplinary authority. Right now for all of those on the licensing side, the Board has authority to revoke, probate, or suspend or censure a licensee. They had it added as another disciplinary option. They can impose a civil penalty or a fine. And so, if we could open the discussion on your thoughts on civil penalties and fines, whether it should be connected just with disciplinary action, or whether it should be expanded in some other sort of way. Right now, as you

know, the Board, neither on the 333 side nor the 436 side, has any authority to impose any type of civil penalty and/or fine.

CHAIRMAN: Discussion? Sharon?

MS. EULER: Yes.

MS. GRINSTON: To all?

MS. EULER: Uh-huh.

CHAIRMAN: That covers it. Thank you.

MS. EULER: The Board should have the statutory authority, whether they choose to use it or not, but why not have all the tools available in the arsenal?

MS. GRINSTON: Now, is that with -- on someone who has been disciplined and gone through the AC process, or just civil penalties and fine authority outside of that process?

MS. EULER: Through the process.

CHAIRMAN: Representative Meadows?

REPRESENTATIVE MEADOWS: Here we go, it's soapbox time. I'm only going to -- and one of the things that -- what people have to realize, and many people may not know it in this room, but it is in State statute that anyone who knowingly deceives a senior citizen

in the state of Missouri is guilty of a Class-C felony. We passed legislation in the last couple years and we revisit it all the time. And Sharon can say this. And I think, and this is just me, anyone who is caught dirty in this business should be barred from this business for life. Anyone who knowingly deceives a senior citizen, knowingly -- and I think that the NPS -- anyone that was associated with NPS, who knowingly deceived senior citizens and funeral-home directors and the funeral homes of this state either, A, should be in jail, or, B, should be barred from doing business in the state under any other guise or flag, and I'm going to file legislation this year that's going to go after that same concept, because we've got to put our foot down, folks. That's one of the reasons why I got involved in this stuff to begin with because there's too many people out there that put too many problems in the industry. So, I'm all in favor of giving you guys the right to do whatever you need to do to go after these and to get rid of this and having these people come back without penalty

to be able to do something, and I know I've spoke with each of you at length about that. And you need all the rule-making authority you need to to get after these bad apples. And I'm going -- like I said, watch and see if that legislation isn't filed. I don't know if it'll go anywhere because of the lobby that it is, but I think there needs to be strong penalties for anyone who knowingly deceives any senior citizen or veteran in the state of Missouri. So, I'll get off my soapbox. Thank you.

CHAIRMAN: Thank you. Joy?

MS. GERSTEIN: As your public member and in light of what has happened over the last couple of months, I wholeheartedly support that this Board should have that authority because, as you said, what we had to go through in begging for help.

CHAIRMAN: Sharon and then Bill.

MS. EULER: And, also, as a part of it is deciding where the money should go -- the civil penalties -- because I can see two possible places; one, it could be used to pay for the cost of audits which are very

expensive, or, two, it could go in to establish some kind of fund that could be used as kind of a victims'-restitution fund.

MS. GRINSTON: I agree that it would be nice. I can tell you the issue that we have had with that. There is a constitutional provision that says any penalty imposed by a State agency for breach of a law has to go into the State school fund.

MS. EULER: That's right.

MS. GRINSTON: And so, we had issues with that with the Real Estate Commission and everything else, that it's got -- it goes over to the State school fund. And so, I don't know if there would be a way, because I think the leading case in that right now, which is about the 1979, maybe 1980, says that even if it doesn't say penalty, if it is for breach of a law, the State school fund gets it, but I think it's a real good point.

CHAIRMAN: Bill?

MR. TRIMM: I agree that from a senior-citizen standpoint, we definitely should have some teeth in the State statutes. I'm a professional engineer, licensed in

Missouri. And as previously mentioned, we have fines and penalties for people that don't follow the State statutes, and I think this is -- this preneed funeral contracts is very important for senior citizens and should be protected by the State.

CHAIRMAN: Okay. Mike?

MR. MEIERHOFFER: My question would be to one of the professionals here, how many other boards have penalties in their -- is this a normal thing?

MS. GRINSTON: Yeah. Right now, we have two, the Real Estate Commission and APELS. We have, I think, two other boards, if I'm not mistaken. One of them may be accountancy may have it, and then there's another health board, and I apologize; I'll get this information for you after lunch. Some of it -- one of the statutes is very old; I think, maybe, the '50s or the '60s when the original licensing statute was passed. We have four groups out there now, and I think the question is interesting because one of the things we hear is that if they have it, you know, someone might run amok with it, but what

we have found is even for the boards who had it is that they never used it or have very rarely used it. So, under the Real Estate Commission and APELS, I think, right now we have on record two or three fines that have been imposed. I think the highest fine that's been imposed right now is $500, if I'm not mistaken.

CHAIRMAN: Don, and then we'll get Josh.

MR. OTTO: Yeah. My only concern -- well, number one, I wouldn't want everything else to get mucked up and held up if there's going to be concerns or legal questions about this, because a violation of 436 is already a violation of 407, and you can get civil penalties under 407. So, is there a concern that you can get double whacked with a civil penalty under the State Board and then also get a civil penalty under 407?

MS. EULER: It's possible.

CHAIRMAN: Josh?

MR. SLOCUM: Could you enlighten me about 407?

MR. OTTO: 407 is The Attorney General

Always Wins Act in Missouri.

MR. SLOCUM: Could I have an objective opinion here?

MR. OTTO: It's the Consumer Protection Act.

MR. SLOCUM: I just don't -- oh, okay.

MR. OTTO: It's the Consumer Protection.

MR. SLOCUM: Okay. Thank you. Certainly, from the consumer perspective, we would certainly support the Board having some authority to impose fines. I can't tell you how many, but many, many states do grant the boards that authority. And I think it's important that there are a few terrible states where the only action a board can take is to do nothing or to revoke the person's license, and sometimes that is too stiff a penalty, whereas a fine that was stiff enough to hurt -- and $500 is not such a fine -- might really get a company or a business back on track and, you know, would actually act as a deterrent.

MS. DUNN: Josh, is there any way you have access to those states? Do you have the

civil penalties in place now?

MR. SLOCUM: I would have to research. I'd be willing to help you do that, but I don't have a database of it.

MS. DUNN: Okay. That's helpful when we attempt to get legislation proposed, so --

CHAIRMAN: Bill?

MR. STALTER: That's kind of what I was thinking. How many times, I mean, you're really kind of reluctant to pull a license, not so much if it was a knowingly, you know, act, but, basically, out of ignorance, not reading the law. And, you know, rather than threaten their livelihood, I mean, have some other kind of a tool. And I see that really -- (inaudible) -- the opportunity for that.

CHAIRMAN: Sharon? Do you have a comment? You have a 407 look.

MS. EULER: Oh. We're all about 407, Jim.

CHAIRMAN: Bob?

MR. BAKER: I think the fine idea is great, but let's put into perspective, you know. A $500 or a $5,000 fine, to me, versus a large company like NPS, it's nothing to

them. It's a deterrent to me, but somehow the playing field needs to be leveled based upon what you have been selling, what you actually have in your preneed accounts, because it certainly -- you know, in the past, as we well know, NPS has been fined, and they went on down the road, but that would put me out of business.

MR. SLOCUM: A percentage, maybe?

MR. BAKER: Percentage. Uh-huh.

CHAIRMAN: Linda?

MS. BOHRER: We, at Department of Insurance, now have a fine structure that's per violation. So, if you, as a single funeral home, do it once, you may get hit $500, but if NPS does it, and they do it 5,000 times, it could be $500 times 5,000.

MR. BAKER: Per occurrences?

MS. BOHRER: Per violation. So, you know, you might want to take a look at insurance's language and see how it's structured on a per-violation basis.

MS. GRINSTON: And insurance's language is rather recent, as well.

MS. BOHRER: It's rather new.

MS. GRINSTON: So, it's been updated.

CHAIRMAN: Good. Good suggestion. Mike?

MR. MEIERHOFFER: Are we going to impose these fines against corporations and corporate officers or the people in the field who are selling the product, who are servicing? That's the question I ask. How do you enforce this? If you've got a bad apple out in the field, does that go back up? Does that go back up the stream, or is it just the person in the field? How do we look at this?

CHAIRMAN: Sharon?

MS. EULER: If we impose the civil penalty or fine as part of the discipline, it would be against whoever the discipline was, and discipline could be taken against any license holder. So, if we have licensed the preneed counselors like we have talked about doing, then the fine could be imposed against them, as well as their seller, and anybody in the chain that holds a license.

CHAIRMAN: Bill?

MR. STALTER: In the prior meeting, what we talked about was having the entity

licensed as the seller, and that you may have the individuals as registrations. So, basically, what you're saying is that license -- that penalty would count against the entity, basically, requiring the entity to keep check on those individuals out in the field.

MR. MEIERHOFFER: Well, but there would have to be something done to the person that's committing a crime.

MR. STALTER: Well, that's -- I mean, you're missing the guy that -- (inaudible) -- was fighting for that because that was his argument. And, basically, you know, I'm going to keep track of my salesmen. I'm going to keep an eye on them. I mean, you either talk about the entity being licensed or the individuals being licensed.

CHAIRMAN: Sharon?

MS. EULER: What Bill said.

MS. GRINSTON: Mike, what did you do to John?

MR. STALTER: Yeah. John, he stepped out for some reason.

MR. MEIERHOFFER: I think he's sick.

MS. EULER: And that's part of the reason why I strongly feel that the sellers, the preneed counselors need to be licensed as opposed to simply registered because while the seller may be ultimately responsible, I don't think anybody in this room would say that they would want somebody who actually stole the money or did the bad act to not suffer -- to not have any consequence for that.

CHAIRMAN: Kim, have you got an answer for this one? Hey, Larry, did you have a comment? And, folks, I forgot to tell you. When you do come up to the podium, we need to -- yes. Larry did. Thank you.

MR. STROUD: My name is Larry Stroud. Everybody knows Larry. Representative Meadows is who I wanted to address this to.

REPRESENTATIVE MEADOWS: Okay.

MR. STROUD: If it's a Class-C felony now --

REPRESENTATIVE MEADOWS: Yes, sir.

MR. STROUD: -- to defraud a senior citizen, and you've already got the law on the book, you need another law.

REPRESENTATIVE MEADOWS: Wall, ain't

that the truth. I couldn't agree with you more.

MR. STROUD: Where is the enforcement?

REPRESENTATIVE MEADOWS: Yeah. I couldn't agree with you more.

MR. STROUD: Okay. Number two, on each count of defrauding a consumer, whether you're selling insurance, preneed, or anything else, is that one count per each account a Class C? Let's say I defrauded all of you here, right here. There's 30 of you. Is that 30 Class-C felony accounts, or is it one?

REPRESENTATIVE MEADOWS: It would be 30 accounts, I would think.

MR. STROUD: Okay.

REPRESENTATIVE MEADOWS: I'm referring now to my legal -- it should be 30 counts.

MR. STROUD: But if you've got the law on the book, I guess my problem is this: Why isn't that law doing something; do you see what I'm saying?

REPRESENTATIVE MEADOWS: That's a good question. Yeah.

MR. STROUD: We passed the law. The law is there. That's where I have trouble

with government. We pass lots of laws, but we don't put our teeth into it.

REPRESENTATIVE MEADOWS: That's exactly right.

MR. STROUD: Am I right or wrong? We sit back and we don't get the teeth in where it should be.

REPRESENTATIVE MEADOWS: I agree.

MR. STROUD: We could sit here and talk about these things all day long, how these contracts are going to read and how they're going to work. You could make a contract so simple and nice -- and I'm not trying to pick on insurance companies. When is the last time you read an insurance contract? They get complicated. Wrong or right? Why can't a contract be very simple? They're very legal, very binding, it's spelled out. It's so easy. Common sense tells you the easier, the better it is to do. The reason you make it complicated is because you want lawyers -- I'm just telling you. I'm telling you how I feel. You want lawyers, and you've got to hire a trainload of lawyers to help you figure out what you're doing, and

keep it complicated for John Doe consumer. And if you're a consumer advocate, don't you want to keep it simple? Don't you want it simple?

MR. SLOCUM: What are you pointing at me for?

MR. STROUD: Okay. So do we. We want it simple. We want it -- okay. But all I'm saying is, if you've got laws on the books, enforce them.

REPRESENTATIVE MEADOWS: The bottom line is, is I certainly hope the crooks that are involved with the NPS scandal, I hear they're under investigation, and I hope like hell they're brought to court and prosecuted.

MR. STROUD: Yeah. I agree with you totally.

REPRESENTATIVE MEADOWS: But at this present time, I don't know of any knowledge. I hear that they're being investigated.

MR. STROUD: Yeah. I'm sure they are, but they're probably really enjoying a nice summer somewhere.

REPRESENTATIVE MEADOWS: But, hopefully, they'll be brought to bear, and

anyone involved in it, like I said, should go jail.

MR. STROUD: And when it comes to penalties, you can't just penalize the guy that's out there selling the program, you've got to penalize his boss, because a good boss is not going to let these things happen.

REPRESENTATIVE MEADOWS: I agree.

MR. STROUD: And a good boss, at the same time, maybe he's a crook, too, but he's going to disavow what that salesman did. "Oh, I don't know anything about it," whether he did or not. Now, you know the old sales game. Come on, folks. You've all been to some kind of sales for years. So, you can't just penalize one person, you better go after the entity right up there.

CHAIRMAN: So, Reverend Stroud, do you want to close with a prayer?

MR. STROUD: I apologize for talking too long.

CHAIRMAN: All right. Why don't we take, like, about a ten-minute break, and then we'll come back.

(Off the record)

CHAIRMAN: Church back in session. Reverend Stroud, do you want to take the altar? Okay. You're done. All right. Okay. Folks, Kim has kind of pulled all the thoughts together, so let's -- she's going to go over it.

MS. GRINSTON: What I think I hear the consensus is right now, yes to civil penalties and fines through the disciplinary process, and possibly looking at insurance's language to see if we can do something to make it meaningful. And one of the things that I can say in response to that comment is -- and this is -- it was a good comment. One of the things that from my insurance days when I understood that if the penalty was too low, you would get an insurance company who would just write off the penalty as a cost of doing business, and it really wasn't -- you know, like you said, it really wasn't a punch. But if we could look at insurance's language and bring it over for the committee to review, I think that's where we're headed. But one of the issues with the civil-penalties language relates back to something we discussed, I

think, the very first meeting, which is preneed counselors, because, as we talk about civil penalties, and taking that through the disciplinary process, if a preneed counselor is just registered with the Board, the Board would have no authority to impose a civil penalty or fine. And so, this group would have to reconsider if you talk about licensing -- I'm sorry -- being able to discipline and/or touch not only for civil penalties, but like Representative Meadows said, elder abuse or misappropriation of preneed funds, if your preneed counselors are just registered, then the Board wouldn't have that authority to do any discipline. If they are licensed, then it takes us to a whole different level, and then we have some of those other concerns attached on. And so, before we write the civil-penalties language, I think it may be good for us to talk about whether you all are thinking about reconsidering what to do with preneed counselors and/or if preneed counselors should be subject to the disciplinary/civil-penalty authority of the Board.

CHAIRMAN: Josh?

MR. SLOCUM: It would be -- with respect to -- and I'm sorry to colleagues here in funeral service, but I'll register my objection to the term "counselor," when what we're talking about is a salesperson. There's nothing wrong with being a salesperson, but I think consumers and business owners need to remember and understand that that's a sales transaction. It seems to me that a reasonable minimum, if I were -- I think if I were a funeral-home owner and I had people who were selling preneed for me, I would want to be very confident they knew what they were doing. And I think whether it's registration or licensing, anybody who sits down with a consumer and makes a preneed sale or a funeral sale of any kind should have to pass a test that shows they understand what the current Missouri laws and regulations are with regard to trusting, transferability and consumer rights, as well as knowledge of the Federal Trade Commission funeral rule, because of the complaints that we get at my office about door-to-door preneed sales or in-my-home

preneed sales, a lot of these people seem to be working on commission. They came from some other business before that. They have no idea what the funeral rule is; they have no idea what the State laws are; they don't give out a price list on time. I don't think the State should give its blessing to any salesperson who can't pass that minimum competency exam. And that seems to me to be something that wouldn't cost a lot of money to administer, either. Thank you.

CHAIRMAN: Don?

MR. OTTO: Just going back to whatever we did in our first meeting on this, and correct me if I'm wrong. I thought we didn't reach a consensus, and what was going to happen is we were going to get, like, a plan A and plan B in the draft legislation. One was a basic registration version, and one was a licensing version that we could look at. So, I think we were -- I mean, correct me if I'm wrong, but I thought that's what we decided was going to happen. Since we didn't reach a consensus, we were going to get plan A and plan B. One was just a registration and

one was a licensing that required things like that.

MS. GRINSTON: And my assumed vote was -- I'm sorry.

MS. COLLINS: No. I was just going to say that I sort of remember that discussion two weeks ago.

MS. GRINSTON: Okay. And my understanding was close to yours, but just a little bit different. I thought that the consensus was just a registration right now, but you wanted to see what the licensing language would look like. And the draft that's coming around this afternoon does that. It has registration right now, but there are brackets where if we put in disciplinary action on a preneed counselor -- sorry -- that this is what it would look like if we put it in the language, and so, merge those drafts. But we'll check to make sure that we're not incorrect on the consensus on that, but I did get that we were just supposed to submit language that did have the disciplinary authority, as well.

CHAIRMAN: Bob?

MR. BAKER: Whenever we're talking about the salesperson, the preneed counselor, somehow I would like to get away from the idea that they're anywhere close to a funeral director. You know, I've dedicated my life to this. I went to school; I passed all the tests, and I would hate to have somebody that has very minimal training having a license that has the same connotation that I have as a licensed funeral director. What we may call it, I guess, is actually what I'm speaking to.

CHAIRMAN: I agree with you, Bob. Joy?

MS. GERSTEIN: And as far as the licensing, the person who is going to sell these, you could license them under a different title. It's just like you have a licensed practitioner who is not the doctor, but they help the doctor and they must be licensed. So, it would be the same type of thing. You could have you, as the funeral director, licensed, and you could have a license for the seller or whatever you want to title it, which would not require as much education or would not refer to them as a funeral director. I would think that you

would want to license these people that are going to be working under you, or that are going to be working on their own.

CHAIRMAN: George?

MR. CLINE: I just want to make a comment that in our experience and at our funeral home, that we only do use licensed funeral directors. In other words, you can't sell preneed if you aren't, and we found that that works very good, so just for what it's worth.

MS. GRINSTON: You might want to ask the FTC about that. No, I'm joking. Actually, I'm not, because there are some legitimate questions about, you know, reining them in. As everybody knows, if you say that you've got to have -- you know, be a funeral director, take -- you know, have funeral information, the FTC may have some concerns and/or objections with that because, on the other side, when we talk about, you know, the difficulties of the Board, you know, we have people signing specialized knowledge. They know they need to be something and then we have the FTC saying, no, you can't let

individual people do with, you know, whatever it is they need to do. It's hard to walk that tight line. I can tell you one thing that is guaranteed is that no matter what happens, the Board will be blamed for it. I'm joking.

CHAIRMAN: Darlene?

MS. RUSSELL: The National Funeral Directors Association already has a program in place called certified preplanning consultant, CPC. And they require you to pass a test on the FTC information, as well as morals and those other things. Thinking in the terms that, you know, if you were a funeral director already licensed, you've already got the knowledge of the law. So, anyone who is not a licensed funeral director already would either have to be a licensed CPC or of that type. But what Mary said made a lot of sense to me earlier in discussions with her. She said insurance has the -- Mary, do you want to tell them how you talk about licensing?

MS. ERICKSON: Oh, sure. Thanks, Darlene. In the regulatory scheme of insurance, we, obviously, have purview over

insurance companies. We have purview over an individual insurance producer, also known as an agent, most commonly, as well as the agency. So, if there should be violation or wrongdoing at any point in the chain, we can hold those people accountable and take appropriate disciplinary or other enforcement action against any of those licensures or certifications.

CHAIRMAN: Don?

MR. OTTO: Yeah. Well, and, of course, you already have the perfect vehicle for this, the law exam that you current give, which about half of it's on Chapter 436. It covers the FTC. It covers -- and most of the rest of it covers what you can and can't do in a funeral. I mean, you might want to have to tweak the test a little bit, which you're going to have to do anyway. You're going to have to rewrite the test anyway if this stuff passes, but you use that test for reciprocity, you use it for several other things. I think it's the perfect test to say if you want to sell preneed, you pass this test that covers Missouri law on preneed and it covers, also,

what you have -- you know, you should know what you can and can't do in a funeral if you're selling a prepaid funeral.

MS. RUSSELL: The law exam doesn't cover the FTC. You'd have to --

MS. OTTO: It covers the funeral. There are questions on the funeral on the test.

MS. RUSSELL: Are you talking about the funeral-service art section or --

MR. OTTO: No. I'm talking about the Missouri Law Exam.

MS. DUNN: Missouri Law.

CHAIRMAN: Josh, did you have a comment? You had your card up there.

MR. SLOCUM: No. I just had a question because I wasn't here for the last one and I'm sorry about that. But whether it's registration or licensing, was there any sort of consensus or was there a majority opinion about what that should mean? Because while I think it's great for the State to be able to say, okay, if we find wrongdoing, we can stop you. But I think that a lot of enforcement actions could be stopped by filtering it out with a test in the first place. So, I would

be concerned if there were to be any licensing or registration that did not include the component of this is the test you have to pass, because I think that could -- a stitch in time saves nine, both for the State and for the consumer who is dealing with this person.

MS. GRINSTON: Well, hearing the discussion, I think it may be a good idea for us to look at the draft and look at the language on paper to see how it works out, because, right now, there are -- you'll see brackets where preneed counselor is put into the disciplinary section. Look at that and see if that's in line with where you want to go. And I would suggest we reconsider the preneed counselor, and -- and this is just a suggestion -- I think we also -- it may be a good idea to suggest looking at the name of the preneed counselor because I can tell you there is confusion about whether this counselor is a funeral director. And, Josh, until you mentioned the point, I could see where someone would hear counselor and think something else and think funeral director or that you've got some kind of special

knowledge. So, I would like to submit that possibly resubmit that back to the review group after you all take a look at the language. But moving on and getting to some other things on the agenda, for civil penalties and fines purposes, is it the consensus of the group yes to civil penalties and fines connected with disciplinary action, and then looking at insurance's provisions to make sure that the violations are meaningful and/or the fines imposed are meaningful? And, again, with the range of violations and how you do that, you all would be able to look at that and make decisions on that once the language is on paper and we pull that over. Is that a consensus?

CHAIRMAN: All in favor, say aye. Those opposed?

(Unanimous voice vote for approval.)

MS. GRINSTON: That will give me my marching orders. Okay. Let's move on to the next fun topic. Let's go back and we're going to have to tackle this mountain, sure enough. Number 5, I think may be the next place for us to get started, amount of funds required to

be trusted. I think #5 merges into the refunding issues, merges into the portability issues, merges into some of all the other things we've been talking about. Having said that, Mr. Chairman?

CHAIRMAN: Yeah. I've got a suggestion. Don, why don't you -- you all have come up with a pretty good idea, and I think that should be presented. And if you want to, you know, present that, it would be a great time.

MR. OTTO: I want to give credit to Mr. Baker, here, for coming up with most of the details of this, so if I could defer to him to present it.

MS. DUNN: Don, tell him what it's called so everybody can take --

MR. OTTO: Oh. It's this piece of paper, it says, "MFDEA Preneed Concept" paper.

CHAIRMAN: It's a Bob Baker plan.

MR. BAKER: As I was driving the other day, I had some sort of an idea, and I called Mr. Reinhard, I called Mr. Otto. The big problem, a big hurdle that we're going to have is portability/cancellation. And I thought,

well, let's get down to simple terms. If the consumer wants to have a contract that allows them portability and also to cancel without penalty, you simply use some type of joint account. It's reported under their Social Security number for tax purposes, if any tax consequence, and they can tell you where to invest the money. "I want it in my local bank. I want it at Edward Jones. I want to put $5,000 in; I want to put $10,000 in." It's payable to the funeral home on death based upon their current prices. If they want to take the interest, have it paid to their grandchildren, we don't care. It's their money. The income off of the investment is theirs to do with as they please. If they want to start out as a minimum, then we would be able to allow them to put the earnings back in to compound. I think if we do this, you have -- time is money. We've got a lot of attorneys here, as we always allude to, that the funeral home should be able to charge some type of a fee for setting this up for the consumer. And maybe the fairest way to do that is a percentage of the total amount that

they want to put into the account. Moving on, and this would be on a disclosure statement that you would have it, if you want a guaranteed contract, here are the options and here are the ramifications if you cancel the contract or if you decide to move it to another funeral home, if you go out of state, you just simply want to go down the street. One of the things that we do have whenever we have a contract that we, as a funeral home, have signed, we have -- and I'm going to ask Don to give me the word one more time.

MR. OTTO: Nonexecutory.

MR. BAKER: -- a nonexecutory contract which you are on the hook to provide that funeral for the same cost that the consumer originally paid. I think a week or two ago, Mr. Speaks gave a good example. Mrs. Jones, 25 years ago, gave him $1,000 of which he took $200 and put it in his pocket or paid his salespeople and paid his expenses that are associated with it. Twenty-five years later, he has the income that he's left in the contract or in the investment, and he simply goes to Mrs. Jones and said, "You know what.

This thing is not working. I don't have enough money here to fulfill the obligation. Here's your money back." The consumer is not going to want that, so somehow -- you know, I'm a consumer. I'm also a funeral director. We both have an obligation to each other and somehow we need to protect both sides of it. You know, right now -- and I think everybody is aware of the information coming out on the guaranteed funds that we'll just say in general, we don't have the exact language on what's going to happen. But there's a lot of funeral homes that's definitely on the hook simply because of the fact that they had to guarantee a price in order to keep the third-party seller from going down the street. One of the things, we had a conference call two days ago for the association. One comment that was made, and it has some merit depending upon on how you actually structure the investment, that the only person that has the ability to guarantee a funeral contract is a licensed funeral establishment. That way, there is not language from third-party sellers, be it trust, be it insurance, that

you are locked in. And let's go back to your provider-seller agreement, that you have to guarantee that price and accept whatever they give you and if you have a shortfall, that's too bad on the funeral-home side. So, I guess the concept of it, it's very basic. There's a lot of things, I think, that would need to be worked out, but portability and cancellation can be as very simple as what we first talked about. If you want a guaranteed contract, then there certainly is a way to do that. And if you are at risk for that contract as a funeral home, and the consumer wants that, then you should have some ability to continue to increase the amount of the investment and, hopefully, recoup your current cost on it.

CHAIRMAN: Bob, Kim has got a question.

MR. BAKER: Yes.

MS. GRINSTON: And just some explanation questions. So, do I hear you saying that option A is under the joint-account option, 100 percent goes in there, consumer gets the choice?

MR. BAKER: Yes.

MS. GRINSTON: Consumer gets the

interest?

MR. BAKER: Yes.

MR. GRINSTON: The only thing is, it's not guaranteed under that option?

MR. BAKER: Correct. Correct.

MS. GRINSTON: Option B --

MR. BAKER: And the amount is not -- it doesn't make any difference. Put $1,000, put $5,000, put $10,000 in.

MS. GRINSTON: And the consumer can tell under Option A where this money goes; is that --

MR. OTTO: Just change the payable-on-death thing at the bank.

MR. BAKER: Yeah.

MS. GRINSTON: And let's say, again, if I choose a new funeral home, totally up to me, does great in the market, I get everything back. But if I want to lock the funeral -- the provider into the prices, then Option B comes up, and then that's when you get to a trust and that's where you get to -- I'm using 80-20, please don't kill me -- but that's where you get to the 80-20 and the interest with the seller and everything else if you are

forcing him to lock in his prices. And the consumer would have the option of choosing B or A. Either I have total control or I'll allow you to have control?

MR. BAKER: Yes.

CHAIRMAN: Sharon?

MS. EULER: A couple of comments. With regard to Option A, people can do that now.

MR. BAKER: Exactly.

MS. EULER: There is no need to include that in the statute because people can do that now. The problem is that for people who are buying preneeds for spend down, they cannot retain control over the money.

MR. BAKER: Exactly.

MS. EULER: And so, with Option A, the consumer -- it's the consumer's bank account, the consumer's Social Security number is on that. There is no way to make that out of the control of the consumer so that it will qualify for spend down --

MR. BAKER: If it's qualification for a spend down, then that contract -- the rules

for that contract will have to change.

MS. GRINSTON: Well, or is it just that if you're going through spend down, your option is B?

MR. OTTO: Well --

MS. GRINSTON: If you are locking people in, you go to a B option as opposed to an A option?

MR. OTTO: There's two ways I think you could do it. There's two ways you could do it. I mean, the comment that you can do this now under the laws, well, I mean, you can do -- that applies to current 436. I mean, under 436, you can do a nonguaranteed contract and a joint account. I mean --

MS. EULER: It's called preplanning, not prepaying.

MS. OTTO: But -- well, so, the key thing with this plan is to give the consumer an informed choice of what they want to do; right -- and so they understand what's going on. As far as the irrevocability thing, right now under a joint account, you can make that irrevocable under current Chapter 436.

MS. EULER: Right. But under what

you're proposing here, if it's the consumer's bank account, the bank, before they will open the account, needs a Social Security number to attach to that. And if the consumer isn't -- doesn't have access to those funds, which Medicaid requires, that they not have access to those funds, then who is the bank going to look to? The bank needs somebody to be responsible for that account. And do you want to jump in here, Rich?

MR. BAKER: It's a joint account reported under the tax-identification number of the consumer.

MS. EULER: But it's not a joint account. It's a pay-on-death account. It's my account, pay on death to Joe Blow Funeral Home. It's my account while I'm alive. It's not a joint account.

MR. BAKER: You make it a joint account as your interest may appear on that.

MS. EULER: Right.

MS. GRINSTON: Yeah. When it just change the name -- if you change the name to a joint account and allow provisions just for Medicaid. Let's say we had -- because we

talked about separating Medicaid provisions separately. If there were Medicaid provisions that protected the Medicaid people under Option A or B, a separate section, then would there still be a concern if both of those interests are protected and both of those options preserved?

MS. EULER: What I'm say is that the joint account will work because you've got a Social Security number. Option A, I cannot see any way that it would -- that the bank would be able to do it so that it would comply with spend down.

MR. BAKER: They do it now.

MS. GRINSTON: As a joint account.

MS. EULER: Not for a pay-on-death account. For a joint account, yes.

MS. GRINSTON: And that's what he said. If they change it to joint account or something like that for Medicaid purposes.

MS. EULER: Right. But what I'm saying is that what I hear from consumers is that, frequently, the people who need the portability are the spend-down folks, you know. They lived in Paris, Missouri, all

their lives. Their kids live in St. Louis and Kansas City and Cape Girardeau. Mom gets unable to take care of herself. The kids move her to St. Louis where they are where she dies, and her preneed is in Paris, Missouri.

MR. BAKER: You don't really have a preneed, you have funds set aside to pay for the funeral.

MS. EULER: Right. But what I'm saying is she needs to do spend down for Medicaid.

MR. BAKER: Right.

MS. EULER: And under Option A, she can't use that.

MR. BAKER: Yes, you can.

MS. GRINSTON: But if you wrote language, Sharon, if you wrote Medicaid language, if you had Option A, Option B, and then Medicaid language for Option A, Option B, so that Medicaid people will never be caught under these options, is that a possibility?

MS. EULER: What I'm saying is, I don't think that's possible under banking law.

MS. GRINSTON: Okay.

CHAIRMAN: All right. Hold on, here.

MS. EULER: Rich, do you have any comment on that?

MR. WEAVER: Well, I mean, as far as the joint accounts, I see how that would work. That works. If you're going to put up an individual's account, you're right. I mean, the bank is going to say, "Give us a Social Security number." They're going to have to identify who that customer is, and that money then essentially belongs to them. I don't know about the spend-down requirements on Medicaid.

MR. OTTO: This is real easy to solve. We actually now have Option A, Option B, and Option C; okay? Option A is what it is in here now. Option -- just a second. And the important thing is to have the consumer have informed choice of here's what I can do with my money, and it has to be presented to them when they walk in the door just like the price list; okay? If they're not worried -- if it's not a spend-down situation, I don't worry about spend down, but I want to control the money, Option A. If I want to be able to have portability -- complete portability, then

you do a joint account like it is currently under Chapter 436, irrevocable. We just make the language very clear with 436, which is kind of already in there, but not real clear, that the consumer has the right to change providers under that. Then if they want the guarantee deal where we're locking in the prices, we have just what's on this page, Option B.

MS. EULER: Under --

CHAIRMAN: Wait. Wait. Josh has had his card up for a while. But, anyway, go ahead.

MR. SLOCUM: Well, Mr. Chairman, you tell me what you would prefer. I have a radically different idea about this, and I'd probably like to take up to two minutes. If you would rather I wait until other folks hash this out, I would be happy to do so.

CHAIRMAN: Okay. Hold your thought. Sharon, you say what your rebuttal to Don.

MS. EULER: All right. I'll make this quick. What I'm saying is that what you're presenting as Option A is currently available to people. They can go preplan, do an

account, pay on death to the funeral home. That's been done for ages. It's very commonly done, and it's not anything new. It's not something that needs to be written into the statute. But if Option A is the only way to have portability, then the people who most need the portability won't have it.

MR. OTTO: Well, we just did that.

MR. MEIERHOFFER: I disagree with that.

MR. OTTO: Yeah, I don't --

MR. MEIERHOFFER: I disagree with that statement entirely. They are irrevocable -- excuse me for jumping out of order --

CHAIRMAN: Go ahead.

MR. MEIERHOFFER: -- but, in fact, they are irrevocable for Medicaid. They can move that to the next place where they want to go. They can take their money and go to St. Louis.

MS. EULER: But if they take their money, then they lose eligibility for Medicaid.

MR. MEIERHOFFER: No. No. They don't take the money. There's where we're missing the -- that money goes from provider to provider. They never touch it. It's just

available -- it's available to move to a different provider.

MS. EULER: And that's exactly what we want to have happen. Well, that's what I want to have happen. People in -- there are other people --

MR. MEIERHOFFER: It happens now. It happens now.

MS. EULER: But under what they're proposing under Option B is there isn't that. You buy the funeral --

MR. MEIERHOFFER: We're talking A. Right now, we're talking A, though. Let's stay with A. A can be moved; agreed? Do we agree to that?

MS. EULER: A can be done right now. It doesn't need to be written in the law.

MR. MEIERHOFFER: It can be moved, too, without them --

MS. EULER: It can be done right now, but if you're wanting to spend down for Medicaid, Option A is not an option for you.

MR. MEIERHOFFER: It is. It is an option.

MR. McCULLOCH: You're thinking if

they take the money out, and they're not.

MS. EULER: Because it's your money.

MR. MEIERHOFFER: No. It's -- make it a joint account and then --

MS. EULER: And I'm okay with a joint account, but Option A is not a joint account.

MS. GRINSTON: But till we write an Option C. I think instead of dumping Option A, Option B, could we write an Option C for Medicaid purposes? I'm sorry, Mr. Chairman.

CHAIRMAN: Go ahead. I'm all for C. Go ahead.

MS. EULER: Kim, if it can be done in compliance with banking law, I think that's great. But I don't think the banks can do it.

MR. OTTO: Right now under 436 -- I'm sorry.

CHAIRMAN: Let Todd -- he's going to buy me a drink tonight, so we'll let him talk.

MR. MAHN: The problem -- the thing of it is here is -- I'm trying to help Sharon out here a little bit. The bottom line is Option B, with all the interest that accumulates, we feel that it needs to have portability, period. And whether -- the

options you put on the table, when this thing goes to the Senate and gets fixed, there is nothing that's not going to have portability. So, might as well take off the table that there ain't going to be -- there are going to be some things that we kind of sneak in there that won't have portability. They're going to be portability. So, however you guys want to write it or put it in there or whatever, there's going to be portability. And I go back to the other thing I said was if it's so difficult to figure out a way to make trusts portability, well, maybe it needs to go insurance because, you know what, it can be portable, it's irrevocable, it can go down the street, this mileage thing, you know, in place that you can't go inside of 50 miles. That's all restriction of people to make a choice. And this is just more stuff just to confuse the consumer, again. You know, like I say, you've got two funeral homes in town, and one funeral home is going to sell a policy, they can go anywhere, it's portable, it's irrevocable, it's 100 percent, it's everything, and then you're going to having

them going to another place and they're going to offer them these things? I mean, I just -- it's confusing. It don't make any sense, you know.

MR. McCULLOCH: Under your scenario, you'll end up with all the business, so you should go for this. So, there you go; you're the winner.

CHAIRMAN: All right. Don, and then we're going to have Josh --

MR. OTTO: Well, back to this. The current 436 says that a joint account must be under the joint names and joint control of both parties. But then it says, however, the consumer can make it irrevocable.

MS. EULER: Absolutely.

MR. OTTO: Okay. That's all it says.

MS. EULER: Right.

MR. OTTO: So, under Option A, regardless -- you just -- I think you just have to write it that says the consumer has the right to make this irrevocable if they want to -- just the exact same language that's in there right now on joint accounts gets applied to this. Now, let's check with the

Medicaid people before we do it to make sure it's okay with them, but, if necessary, then you're right, we have Option C, which is having it in a joint -- you know, something that meets the Medicaid thing.

MS. EULER: Well, and it's not only Medicaid, but it's banking law, and I don't think that Option A -- I don't think you can do a transfer-on-death account and make it irrevocable because, if you do, then there's nobody who has control over that money.

MR. BAKER: Take the transfer on death out of it and just make it a joint account.

MS. EULER: Well, a joint account is fine, but that's not what Option A is.

MR. MEIERHOFFER: Scratch it and put it in there.

MR. OTTO: Scratch out POD, put joint account.

MS. EULER: Yeah. I mean, a joint account, you can make that work, and we have that in the law now.

CHAIRMAN: Rich, I mean, can you check on the way they're talking about it first?

MR. WEAVER: Yeah, I can get

clarification.

CHAIRMAN: Okay. He's going to get clarification and ?

MR. OTTO: The only tricky part about that -- which I don't mind that, but the only tricky part about that is if you make it a joint account -- okay -- it makes it a little bit more difficult. You're going to have to write something in about the consumer changing --

MS. EULER: Or the funeral home changing.

MR. OTTO: Or -- well, about -- if you want to change funeral homes, I mean, if it's payable on death, it's real easy to go in and say I don't want this person -- I don't want this funeral home, I want that funeral home. That's real easy. If it's a joint account in the consumer's and the funeral home's names, that's a little trickier to do that.

MS. EULER: Well, and the current law, I think, needs to be tweaked to add some restrictions to make it clear that neither the consumer nor the funeral home can move that joint account without consent or some

restrictions on that.

MR. OTTO: Well, like I say, that's why the payable-on-death thing is easier.

MS. EULER: Yes.

MR. OTTO: And so, if the consumer doesn't want to spend -- I still kind of like Option A for when the consumer is not worried about spend down.

MS. EULER: And they can do that now.

MR. OTTO: Well, yeah, but it's not an option that's presented to them, usually. I mean, it's not -- I think these options should be presented to the consumer, say here are your three choices. We'll help you set up -- you can do Option A on your own. If you want us to set it up for you, get all the paperwork done, here is what our charge is for doing that. You can do it on your own if you want. If you want us to do, here's what we charge for that.

MS. EULER: And I'm sure there are funeral homes who do that now. I know that in the AG's publication on end-of-life issues, that that is presented as an option, to preplan, but not to prepay.

CHAIRMAN: What I want to know -- I'm from Paris and I need to get my money. But, anyway, Representative, and then Josh, you're up to three minutes instead of two.

REPRESENTATIVE MEADOWS: I'm reading Option B. It says, "This would be a trust similar to what is currently in Chapter 436, the seller would have the right to retain 20 percent or perhaps 10 percent if that is the consensus, and would have the right to all income from the trust. If the consumer cancels or wishes to change funeral homes, consumer would get back 80 or 90 percent, and would not be entitled to the interest income; however, in this case, the contract could be guaranteed, but not the prices." Where is the portability in that? There is no portability in that?

MR. OTTO: It makes it clear -- well --

REPRESENTATIVE MEADOWS: I mean, because I -- shouldn't there be portability in that, too, or no?

MR. OTTO: Well, it depends how you define portability is the problem. Like what Bill Clinton said.

REPRESENTATIVE MEADOWS: What is is?

MR. OTTO: Yeah. What is is means. Right now, under the current 436, it doesn't -- it's really bad. It doesn't really tell you what you can do. What you would want is to write in the law that basically says if you change homes, funeral home #2 is going to get the 90 percent.

MR. MAHN: And no interest.

MR. OTTO: And no interest. And the reason for that is what we talked about earlier, like what Brad said, is to make this a two-way street because the funeral home is taking a risk at locking in these prices. They're setting up the trust. They're doing all the expenses for setting up the trust. Under this part, they would be paying the taxes on the interest. They have to do the reporting. They've paid their people and their building and all that. And so, this is -- again, the most important thing with Option B, though, is to make the consumer aware of what their rights are. Say, look, if you choose Option B, what you're doing is buying and prepaying for a funeral at this funeral

home. That's what you're doing. And if you don't like that-- okay -- if that's not what you want, then don't choose this option; okay? Because what you're doing with Option B is buying a funeral at this funeral home. And if you don't want that because you want to be able to move the money around, don't choose this option.

REPRESENTATIVE MEADOWS: So, there would be no portability in that plan; is that what you're saying? They couldn't -- now, in an emergency situation, Mom has got to move back with the kids or whatever or Dad, there would be no portability in that plan?

MR. OTTO: You can take the 90 percent and go wherever you want.

CHAIRMAN: Okay. Hold on. We've got -- go ahead, Josh. You go ahead. You may have a whole different concept and might kind of cure this. Go ahead.

MR. SLOCUM: Could I ask everybody to take out the sheet that looks like this, please, with "Funeral Consumers" on the top, because I tried to make this graphic and simple as possible. On the MFDA concept,

yeah, Option A, the payable-on-death account, that's what Funeral Consumers Alliance already advises most people to do because there aren't that many states where we think it's safe to prepay. And I will be clear and honest with you, Missouri is one of the worst, and we warn consumers positively and actively against prepaying in Missouri.

MR. MEIERHOFFER: Thank you.

MR. SLOCUM: I just -- I need to be clear with you. I have put together a chart here which had -- starts out Alaska, Arkansas, and California. Does everybody see this? Okay. There is nothing special about funeral service in Missouri that makes it impossible for funeral homes to adhere to the standard that 29 other states already have on preneed: 100 percent trusting, interest accrual, maybe a reasonable fee, and complete portability to the consumer less the small reasonable trust fee. There is nothing about the funeral business here that can't make that happen. And I'd like to point out, please, with all due respect and no criticism to anyone personally, Missouri is about as far down as

they can get without being Florida and Hawaii who are sixth from the worst in the entire country in terms of consumer protection and preneed law. That's just a fact. And I'm glad to see all the people here working to change that because what's going on right now with 20 percent being skimmed off the top interest every year -- I also did a little math exercise here. Missouri preneed law and financial house of cards. What I did was a hypothetical funeral, $6,000 today's prices. Mrs. Smith gives her check for $6,000 to the funeral home on a price-guaranteed funeral. The funeral director, under Missouri law, can take 20 percent, so he takes $1,200, or the third-party seller, the NPS guy, whoever it is. That leaves $4,800 in the trust. Under Missouri law, every year he or she can take the interest that's earned, so at 4 percent, takes $192 every year. Let's say Mrs. Smith lives for seven years, and I calculated the average rate of funeral inflation from the U.S. Bureau of Labor Statistics. For the past seven years, it's an average of 4.72 percent per year. That's a rough average. I

understand that some of you will have different experiences. What do we find? A deficit of $3,114 in that account with the retail prices seven years hence and the money being taken out. There is no other way to describe this but taking tomorrow's profit to pay yourself today and then expecting that you're going to be financially solvent to service this funeral tomorrow. And you might say to me, "Well, maybe his cost isn't really his retail prices." Well, that may also be true, but what you're doing is asking a funeral home, or a funeral home is setting itself up, through shortsightedness, to be giving a funeral at cost without profit because he spent the profit he should have gotten today seven years ago when he sold the preneed contract. And in terms of price guarantees, I have heard this argument and I think other people will probably make it today, well, the funeral home is taking a risk because he's guaranteeing the prices and he stands ready to service this contract, et cetera, et cetera. Yes. If you've got a guaranteed contract, guaranteed price, the

consumer signs it, when the funeral is performed and delivered, the consumer says, "Yes, I understand that you'll get all the interest in the account even if it's more than what today's prices are," and some funeral homes will have to take the difference if the account hasn't grown. I understand that. We're still going to advise consumers not to do it. However, if the consumer transfers or cancels, the funeral home has not taken a risk here. That casket that was sold for $1,000 preneed has not even been ordered from Batesville or Aurora. He did not take something off his inventory and put it over here so that he can't sell it today. All that happened was that the consumer gave money that the funeral home is making interest on in all this time. If the consumer cancels before the goods and services are delivered, this is the consumer's money, not the funeral home's. It is the funeral home's money when the contract has been performed, when the goods and services are delivered, but there is no moral or ethical justification in allowing a business to take 20 percent or even 10 percent

and all the interest and say, "I guaranteed your prices," because you know what, if the consumer goes somewhere else, the funeral home hasn't had the staff out there to make the first removal call. They have not called the casket company. The only thing that's been done is a sales transaction seven years earlier. So, I am willing to be educated if there are things about this that I don't understand, and there are business transactions that are going to make this more difficult. I'm a reasonable guy and I'm willing to hear it out, but I need to say that if Missouri will not join the majority of the rest of the country -- and, you know, I don't see funeral homes going out of business in these 29 states with 100-percent trusting. The National Funeral Directors Association -- the national association is on board with 100-percent trusting. That's where even the industry is going. If we can't get there or get there somewhere reasonable, Funeral Consumers Alliance not only won't be able to support this, we will have to campaign against it. Thank you.

CHAIRMAN: Thank you for those comments. Todd?

MR. MAHN: Yes. If we -- if a miracle happens -- and nobody knows this for sure it's going to happen -- and the guarantee helps us out -- funerals with this NPS thing, it's, frankly, a miracle; okay? And my question is that these trusts that we keep talking about where 20 percent can be taken out, interest can be taken out, let's say over a period of 30 years, a funeral home builds up, you know, a pretty large sum of money in a trust, but goes out of business. What agency -- who guarantees these trusts? Where the guarantee at, is what I want to know? Who backs it up? Like, you know, if the guarantee is going to back it up because it is insurance -- I'm just using a little example -- where is it, you know, guaranteed -- and you told us to go home and soul search and all this other stuff, so I went back and did homework. I called up funeral-home owners that I know. Everybody that I polled thinks there should be 100 percent, it should be 100-percent portable. This belongs to the family. This is a service

that we're providing. I also talked to people in the financial institutions and, you know, they said that, you know, it makes no sense. It would be like somebody walked into A.G. Edwards that had a mutual fund there for 20 years and they say, "We want to move it to Edward Jones next door," and they're, like, "Well, no. We've got a 50-mile radius and you're only going to get 80 percent of your original mutual fund, so you lose your 20 and your interest." I mean, this almost makes no sense.

UNIDENTIFIED: You're going to get a penalty if you do that.

MR. SLOCUM: Twenty percent?

MR. MAHN: Twenty percent and all your interest?

MR. SLOCUM: Twenty percent?

UNIDENTIFIED: A penalty is a penalty.

MR. MAHN: I know -- I am actually married to a financial-compliance inspector, and I know this stuff fairly well. And I know you're not nailed 20 percent and interest; I know that. So, you know, maybe we need to get some experts in here because I

don't know, but this ain't going down the right path.

CHAIRMAN: Good point. Let's finish up here and then we'll let you all comment. Go ahead.

MS. GRINSTON: I don't know. I have a question, and this is just to help my understanding. Am I hearing that for those who are looking at the option ideas, that you believe that the consumer should always have an option to cancel, to get all their money back, no matter what? Because, you know, when you think about it, if I buy -- and I'm not comparing this to a car, Representative Meadows. But if I buy a Ford -- and I'm playing devil's advocate. But if I buy a Ford and then go back to the Ford dealer and say, "Now, I want a Chevy." He says, "I don't sell Chevys," but I want a Chevy. You say, "But you chose to buy a Ford." When you deal with -- if you say, "Listen, we will give you the option to have complete control, get all your money back, get all the interest, you can do anything you want to do with it. You can have that option, go for it." But should I

have the right to come in as a consumer and say, "I want these prices locked in and this is what I want," and we say, "Okay. If that's what you want, then this is what comes along with it." I'm just using this as an option. I'm going to use this as an example. We recently buried my grandmother, and when I buried my grandmother, I got a new appreciation for locking in prices on a funeral. And if I have a choice of being completely free, give it to me. But what if I don't want that? What if I want you locked in and obligated to me, everybody, you know, I want you locked in. I want you to keep this price even if you -- if it costs me $30,000, if caskets go to $100,000 a pop, I want you locked in no matter what. Help me understand if the thought is that even if I want it locked in, if I don't want it locked in, at every option, we want to make sure -- is it my understanding that the thought is that consumers should still be allowed to get everything back no matter what they choose?

CHAIRMAN: Josh?

MR. SLOCUM: To pick up on your

analogy, the consumer goes in and buys a Ford and then comes back and wants a Chevy. Well, the consumer bought the Ford and drove off the lot, but the consumer didn't drive off the lot in the casket. When you prepurchased a funeral, you have not been delivered the goods and services. That is the crucial difference. That is the crucial difference. What you're doing is giving a funeral home money that they are making interest off of. One of the reasons why we tell people this is not usually a good idea unless you need to do Medicaid is look in Missouri, who is making your interest for you? I would love to have somebody give me money and allow me to make the interest that they could be making in their own investment. Whether it's price guaranteed or not is absolutely irrelevant because there has not been a cost. And I'm trying to find the clearest possible way to explain this. There has not been a cost to the funeral home outside the original sales contract until the goods and services are delivered.

MS. GRINSTON: May I ask a question on that, Josh? John runs a third-party seller,

because in Missouri, sellers cannot be funeral homes. John, before the services are provided, do you provide -- do you have any costs to you, as a seller, prior to the date of disposition?

MR. McCULLOCH: Well, you have the cost of setting up your trust, of course, and, of course, you have an office, and you're paying salespeople. And you would have training. So, you would have all the normal expenses of any business -- commission.

MS. GRINSTON: And that's someone who is not a funeral home, who is just selling somewhere else. And so, it's a business entity, and I don't know. Maybe we need to ask that question: Are there costs before the final services?

MR. McCULLOCH: You don't have to be a third-party seller to have costs.

MS. GRINSTON: Mr. Meierhoffer?

MR. MEIERHOFFER: Yeah. Let me give a little history lesson. Going back to Option A, which was the only option that we had as funeral homes for years, and even before the third-party sellers, we used that as an

option. And it was an unguaranteed funeral arrangement that we all had. So, people would come in and they would give us $1,000 or $500 or maybe even more. And, again, the kids would come in later and say, "Mom said it was all paid for," and the answer is it may not have been. So, we're running into those problems. There was an innovative funeral home or funeral director in Kansas City many years ago that said, "Okay. I've got a way to do this. I'll guarantee it," and that began one of the processes in this country which has evolved into a big business in trusts, and they were guaranteeing those, and the State of Missouri reacted, laws were made, and they said, "Okay. You can take this product and service, if you will, to the consumer in an area that will be outside of coming in" -- and this is where the difference lies, Josh -- is that what you're talking about is great, but it means that the person the consumer has to walk in and take it from you, and that was my philosophy for years until I realized I couldn't do funeral service and take care of the person who wanted to come

in and make a funeral arrangement just off the street.

MR. SLOCUM: How do all the other states do it?

MR. MEIERHOFFER: And I'm not talking about other states, I'm just telling you -- I'm giving you the history lesson.

MR. SLOCUM: Okay.

MR. MEIERHOFFER: And then it evolved in the fact that we said we need to be able to be proactive to the consumer and take somebody out to talk to them about it, and they did, and there are charges or fees involved with that because you're paying commission and all these other things. That's how it evolved. And the truth of the matter is, I think what this group needs to be thinking about is, do we want to have a guaranteed cap or do we want to say there is no guarantee and let the market be what it is? The thing you have to remember when you do that is, you're going to take people off the street that are doing, I think, a service for the community, and that's giving them a way to prearrange their funeral service, in some

cases, prepay it, and it's all done. You will say there's some risk in that, and I would not disagree, but there's risk when we walk across the street. We can't take all the risk out of what people do in society, and we can't make laws for every crook that's going to be out there. We know that. So, we want to do the best thing we can. There is going to be some tension here, and that's what we're all about. Do we take it to the public or do we bring it back in, close the doors, and say you've got to come in and take it from us, and it's going to be 100 percent in the bank and you can have the money and move it whenever you want? That's really what it boils down to.

MS. GRINSTON: I'd like to say something just as a cautionary deal, because we've had this happen as we talk about terms and percentages when we talk about what other states do. And a lot of them, if you actually -- when you read the law, you realize that the structures are all across the board. For example, I'll give you an example in Arkansas. Arkansas trusts 100 percent, but it

says that if you cancel, you get 100 percent of all sums paid to the seller by the purchaser, not to exceed the contract price. So, while they're at 100 percent, they are still giving the interest to someone else because you're capped at the contract price. So, if I do $5,000, and interest goes up to $6,100, you can't get back more than the contract price, which is $5,000. So, while it looks at 100 --

MR. SLOCUM: It's right there. I've acknowledged that right on my chart. It doesn't mean it's perfect, but --

MS. GRINSTON: Yeah. But what I'm saying issue is -- I'm not saying issue without, I'm saying that while they're at 100 percent, when someone comes in and cancels, that doesn't mean they get 100 percent back. California -- I'll give you another example -- they're at 100 percent, but then it says, "The income from the trust may be used to pay for a reasonable annual fee not to exceed 10 percent." So, California is really 90-10 to a certain extent because -- and I --

MR. SLOCUM: May I correct you, please?

MS. GRINSTON: Sure.

MR. SLOCUM: I'm sorry. Because I thought that, as well, and I have clarified this with the State of California. It's 10 percent of the interest, not 10 percent of the account.

MS. GRINSTON: Right. But what I'm saying --

MR. SLOCUM: That's a very big difference.

MS. GRINSTON: You're right. You're probably right about that, but I think when we use the term "100 percent," people think 100 percent means what I paid plus all the interest. And, in reality, sometimes when you get into the states' laws, that some of them are 100 percent plus there's something else, you know, out there. You get, you know, that percentage of interest, like you were saying --

MR. SLOCUM: Right.

MS. GRINSTON: -- or whatever. And so, I just wanted to throw that out as a discussion point, that we understand that there are several options on the table that can accommodate, especially that some of these

other states are using, who are at 100 percent with variations that go back and forth.

CHAIRMAN: Don?

MR. OTTO: Just -- two things. One, I mean, we -- it's been thrown out on several times that, well, I can move this and change this, and there's not a cancellation fee. Or I can, you know, go from this to -- almost in any situation -- now, I'm not going to argue that 20 percent is not too much because, you know, I agree with you that 20 percent is probably too much. But if you go -- if I go to Edward Jones and want to change my 401(k) over to another thing, there is a penalty. I don't know what it is, but I know there's a penalty. If you put patio -- my old example -- patio furniture on layaway at Target, if you cancel the deal, you get your money back, but I think there's a 15 percent -- I think it's 15-percent restocking fee.

MR. SLOCUM: Yeah, but they've already taken the stock off the floor so somebody else can't buy it. That's not the case with the funeral home.

MR. OTTO: No. That's not how -- I

know about this and that's not how Target --

MR. SLOCUM: Oh, okay. Well, then maybe they should.

MR. OTTO: Maybe they should, but they don't. No, they don't do that. But, anyway -- and so, here I am. I am a funeral home that has established my own trust and I've done a good job; okay? I paid to do the research -- paid my attorneys to come up with a contract, because we're not going to have a standard contract, so I've got to pay an attorney to come up with the contract. I've paid the bank to set up a trust, and there's an annual fee to have that trust, you know -- there is. I have paid my staff to be there. I've paid the electric bill so the consumer can come in and take a look at the casket room. I've done all this work, I've put the money aside. I've invested the money well, so it's doing pretty good even with all those expenses. And, yet, if there is no penalty or something and the consumer wants to go across the street to my competitor who has got a lousy trust, who does a horrible job, who is -- you know, my competitor across the street

gets the benefit of all my hard work, all my money, all the -- my attorney's fees in doing the contract, my accountant's fees for making the sure the books are balanced every year, the bank fees and all that. So, I believe that especially if there is a guarantee involved -- and to say that the consumer hasn't gotten anything yet when they sign a guaranteed contract, I think, is incorrect. If you buy -- if I put a $500 option on a house, I give you $500 because I might want to buy that house and I want to have the option on it, what have I got? I don't have the house yet, but I have the right to do something earlier. If a consumer buys a $5,000 funeral and he's got a guaranteed price, they have gotten something that day. They got that guarantee. Now, canceling it and getting -- losing 20 percent, I mean, we're already on record that the 20 percent is too high, and I think there's a lot of people would like -- on our association, there's a lot of people who would like to go 100 percent. We recognize that's probably not a realistic thing over at our capitol, and so,

we want to get something that will pass and will be realistic, which is why everybody keeps, I think, talking about the 90 percent. But to say that that first funeral home has no expenses and should not get anything is incorrect. And it's also analogous to all these other situations. There are penalties in just about every other thing. How much that penalty is is certainly a fair argument.

CHAIRMAN: All right, folks. We're getting close to lunch. D.J., I would like you to come forward and state your name and then we'll take some comments from the public, and then I'm going to let Representative Meadows sum it up here.

REPRESENTATIVE MEADOWS: Thank you.

MS. GROSS: Hi. I'm D.J. Gross, and I'm in south-central Missouri, and I just want -- I'll try to be really, really brief. As most of you all know -- I don't think there's probably a person in here that doesn't realize that I've had to deal with probably every nightmare there is with preneed, whether it's underfunding, unfunded, cancellations, and that type of thing. So, what I have found in

the three years that I've been back in the funeral industry is we need to make this, if it's not 100 percent, there needs to be just a small fee for that. When you look at these Options A, B, and C, or current law, you have consumers walking in -- and, Sharon, I think you had mentioned it earlier. They come in and they're on spend down and they're forced in the doors. We're not out soliciting, but they walk in the doors and they have to get rid of their money. And when you look at this and you see that on a joint account, we have a counselor sitting there or ourself, we have to put 100 percent in that. There is not a question on that. So, the consumer, if we say to them, if you put it in a joint account, you get all your money and you can transfer it to another funeral home and no penalty. If you put it in a trust account, we're going to keep 20 percent. If you buy an insurance policy, you can take it wherever you want to go. And I know there's a lot of people in here that put their money into trusts, but if a consumer is looking at this, they're going to be look at why would they

even put their money in trust. And it looks like on this, in talking to consumers, that we're penalizing the ones that need the protection the most. And it's like if you put your money in a checking account or savings account, and you go to First National Bank and you put in $5,000, and you go back later to get your money because you want to go across the street to Community Bank, and they tell you, "We're going to keep 20 percent of your money plus all your interest," I don't think that bank would be in business long. And I can't believe that we're still at this -- in the funeral industry, and this law has been on the books for however many years since '82, and consumers are still allowing it to go on. And, again, I go back to what I'm dealing with right now, and there are other funeral homes now with the NPS fiascos that's there and not knowing what's going on, but it's the consumers that are losing on this. And when you -- when funeral homes are sitting there and locking in the costs and then are taking 20 percent, and they're taking the interest, and if the seller doesn't stand behind their

contract and they're gone, what's going to happen to the funeral home, and inevitably it goes to what's going to happen to the consumer. So, I hope that when this goes over to the legislature, that they can look at this and see that it needs to be -- if it's not 100 percent, it needs to be very little under that or a fee set up, because when you have the funeral industry right now, like I was saying, with taking the 20 percent and the interest, as the funeral-home owners either die or sell, it's going to be hard to find someone else to come in and honor those guaranteed costs, and it's going to go back to the consumer, so I just wanted to say my little piece.

CHAIRMAN: Thank you. Anybody else from the public have a comment? Brad?

MR. SPEAKS: I'm Brad Speaks from Independence. Appreciate Josh's impassioned comments about the consumer's point of view. You know, in general, I think funeral homes recognize those issues. And while Sharon and some of her brethren at the attorney general's office field complaints constantly, it's

probably nothing compared to what funeral homes experience when we deal with families at need. The point Josh made about third-party charges, in particular, continually pops up and we're very sensitive to that. I want to comment on two things. One, Josh had said he had a third -- a different plan. I didn't hear what the plan was, so maybe we can explore that later.

MR. SLOCUM: That's what it was. Hundred percent, hundred percent portability, transferability.

MR. SPEAKS: Oh, I thought you had, like, a unique solution that would cure everything. Sorry. In regards to other states -- you know, the question, well, how is that working in other states, I think that question revolves around Mike Meierhoffer's history lesson which is that preneed was invented in Kansas City, Missouri, in the '50s. Missouri is experiencing this phenomenon because we have been doing this for 50 years. I belong to a number of national funeral organizations. I honestly could not find very many funeral homes nationwide that

love guaranteed-price preneeds. In fact, the discussion in our industry nationwide is why are we doing this, you know. It is consumer friendly because the price is locked in for those that stay with that funeral home. That is a consumer-friendly thing. However, over the course of 50 years in Missouri for the funeral homes that got into it early on, like our firm did, we have seen those shortfalls. And even if we had trusted 100 percent and compounded the interest, the shortfalls would still be there. So, in the end result, who picks up that difference? And you might say, well, the funeral home does. No. The consumer does. The consumer always does. I don't have a magic pot of money that I pull out of thin air to cover shortfalls, no matter what the shortfall is. And I talked to funeral homes that bemoaned the $300 shortfall; others bemoan the $5,000 shortfall; others are somewhere in between. But that shortfall eventually appears in that company's at-need prices, and the consumer pays for that. So, what I'm interested in in having a discussion about nationwide -- not just

Missouri, but nationwide -- is there some other way to achieve everybody's goals for funeral homes to do what funeral homes do best, which is take care of people when they've lost the most precious person in their life, can consumers protect their interests, you know? Is there a way to stop the madness and achieve everybody's goals? I have not yet heard that today. I'm probably not smart enough to think of that, but maybe in a group this size, we can come up with some innovative solution that gets us where we need to be. Missouri started preneed, you know. Maybe we can be the first to fix it, too.

MR. MEIERHOFFER: I've got a way.

MR. SPEAKS: Oh, good.

MR. MEIERHOFFER: Don't guarantee anything anymore. Now, if you could legislate that for us, but you can't. If you could legislate that for us, but there would always be somebody out there and that's the dilemma.

MS. GRINSTON: But can I speak as a consumer, though?

MR. MEIERHOFFER: Sure.

MS. GRINSTON: As a consumer -- and

I'm not speaking as an attorney or anything else -- there is some benefit to me of a guaranteed price because --

MR. MEIERHOFFER: Of course there is.

MS. GRINSTON: -- instead of having to pay the prices 30 years from now --

MR. MEIERHOFFER: But take it way from us. Take it away from us.

MS. GRINSTON: Yeah. But what if I want it.

MR. MEIERHOFFER: There you go. There's the dilemma. There's the dilemma. Josh wants 100 percent, you want the guarantee. That's the dilemma.

MS. GRINSTON: Like it or not like it, there are consumers out there who want it.

MR. MEIERHOFFER: Exactly. Take it away from us, Representative.

MR. OTTO: And the analogy of the bank that D.J. made is actually, I think, very good. If you go to a bank and you have a money-market account where there is no interest guaranteed, yeah, you can take that money out any time and go across the street. If you buy a ten-year CD at a 6-percent

interest rate from that bank and you go in and you want to cash it in or move it, guess what, there's a huge penalty because they've guaranteed that price -- that interest rate over a long period of time. And that's with our Option A and B, that's really -- we can deal with the details, but that's what we were trying to get at. Give the consumer the choice. Do you want guaranteed, and if you want it guaranteed, there are some consequences to having it guaranteed.

MR. MAHN: But, Don, there really isn't any consequences if they take insurance. I mean, that's perfect for the consumer. It's perfect for the funeral home. And, Mike, I can solve your problem right away if it goes 100 percent. We can get some people in the insurance industry up there and you can keep your counselors out there, everybody would be happy. They'll get paid probably better than they do from trusts. You'll get bumped on insurance, and you'll start recouping some shortfalls you had in trusts because, Josh, I'll tell you --

MR. MEIERHOFFER: Well, don't think

that insurance pays it all; they don't pay it all, either, necessarily.

MR MAHN: -- each year I do about $75,000 a year in shortfalls in my trusts, which I absorb or however we build it in the price or whatever.

MS. GRINSTON: Say that again, Todd.

MR. MAHN: But we get hit by that. Every year out of trust, I take about a $75,000 shortfalls at each funeral home from what the price is today to what, you know, I get from whether it's APS -- well, NPS, and my own either joint account or trust.

MR. MEIERHOFFER: And you're not atypical.

MR. MAHN: And I put in 100 percent and never touched any interest. So, tell me again a firm touches the interest, takes a 20 percent. Something happens to that firm in 15, 20 years, who's bailing it out? The guaranteed trust or association? I mean, who bails them out?

MR. MEIERHOFFER: Make it not guaranteed.

MR. MAHN: That has nothing to do with

the guarantee.

CHAIRMAN: Todd -- I mean -- you're Josh. I'm confused.

MR. SLOCUM: Very quickly. What Mr. Speaks said, I'm all for it. I tell you, I wish funeral service had never opened the can of worms of everything is taken care and price guaranteed. I hear you say you want it. You know what, I want a brand-new BMW. I'm not going to get it. The reality is, do you know any other transaction where you can lock in the price 20 years hence? Gasoline --

MS. GRINSTON: Yes.

MR. SLOCUM: What's that, Kim?

MS. GRINSTON: Just -- I'm going to pull something. This is going to sound very trivial. Some of the other professions that I work in, Real Estate Commission. There are real estate agents who will say, if you do X amount of business with me, developer, I will lock in my commission no matter what happens. So, if the industry goes up to 99 percent, I'm going to keep you locked in at that 7, 8, or 9.

MR. SLOCUM: This is -- fine. I

acknowledge that. This is unrealistic. What has happened, not anybody's particular fault, the funeral service itself has stoked the most unrealistic expectations in the consumer, and we, all of us, funeral directors and consumer advocates, are reaping the fallout, because I would love for some of you who doubt me to come and answer my telephone and try to convince Mrs. Smith that there are consequences to these price-guaranteed funerals that she's going to lose -- she's going to give up all the interest, that knowing Mrs. Smith, just because this funeral home guaranteed it doesn't mean the new one you want to transfer it to can guarantee it. Consumers -- I'm sorry -- are largely and terribly ignorant of the funeral transaction. That's not a criticism. I mean ignorant, lack of knowledge. They hear what they want to hear, and funeral service has been telling them a fairy tale for decades, that you can take care of everything. I will work with any of you guys in funeral service who want to do something about getting rid of this idea of price guaranteeing and working to

realistically educate your customers about what their responsibilities as well as their expectations are. That's all I have to say.

CHAIRMAN: Thank you. Now, Representative Meadows has another obligation to meet. We're going to close --

REPRESENTATIVE MEADOWS: Yes. I know that you -- and, thank you, Mr. Chairman. And first of all, I wanted to say thank you to the Board and to each and every one of you for allowing me to take part in this process. This afternoon, I won't be returning for the second half of today's meeting and, consequently, I will not be here next Tuesday, either. So, you won't have to hear any more of my soapbox speeches, Mr. Speaks. But as it goes, I commend you all and especially this State Board for all that you have done in trying to bring this process forward. As Senator Delbert Scott had stated, you folks in this room will guide the future of your own destiny here. Understand that the legislature is crying to fix this in the most appropriate way. I would hope for anyone that's in this room, once you collectively agree on

something, that once we take the interim committee forward, that we, come January, that we're not running down the hallways of the State Capitol trying to come up, going to different legislators' offices, whomever they may be, trying to downtrod the work of this committee. That's why you all should be united as one regardless of your disagreements on portability and trust funding. I know where I would like to have it. I think portability is important, and I think 100 percent should be trusted, but that's not what the industry decides. You will have to give me those guidelines. But whatever you do, I beg each and every one of you, do not run down the hallways of the State Capitol trying to cut side deals to get amendments to this bill or to try to derail this legislation. This is a much needed thing in this industry for the consumers and for the senior citizens of our state. So, I ask that you put, you know, some of your self-interest aside as you move forward through this process. I will be returning for the meeting in August, and I wish you all much luck in your endeavors. I

also wanted to say if you have that piece of that legislation that I can take with me, I will gladly get through that. And I would also ask the Board if I asked someone to fill my seat for me, I'm going to put a request in, and then you can talk about it, and whatever you may want to do with that, just in my absence. And with that being said, I thank you all, and now I'll get off my soapbox. Thank you.

CHAIRMAN: Folks, I appreciate the spirited debate, and we're going to adjourn for lunch, and we'll be back at, like, 1:35 or 1:40. Maybe you can solve all this over lunch.

(Off the record)

CHAIRMAN: At this time, I think we're going to go ahead and continue the discussion. I know we're going to continue the discussion, and it looks like we may just agree to disagree, but, anyway, since you've been to lunch and had a good meal and maybe had a couple of drinks, everybody is feeling a lot better, do you think anybody has changed their mind about how you want to do this?

MS. BOHRER: I just want to clarify no

State employee has had a drink over lunch.

CHAIRMAN: We've got that cleared up.

MS. BOHRER: Just for the record. Where is that court reporter?

CHAIRMAN: Folks, this is crucial to everything to come out of here with some kind of consensus. Now, if we go out and we don't come to a consensus and we agree we can't come to a consensus, then somebody else is going to deal the deck and not us. And, Josh, I'm not saying that as an industry, I'm just saying we are consumer -- we are a consumer Board and this group is here for the, you know, consumers, and we want to take care of portability, and we want to take care of the percentages and all that kind of thing, so I don't mean that as a -- don't quote me on that. But, anyway, we've got to come to some kind of agreement here. Now, if anybody has got any ideas, and, I think, Bob, you've got a good solution to some of it, and Josh made some good points. And, Sharon, you know, we've got some issues about Medicaid issues there and irrevocabilities, but we've got to come to something that these plans can be

moved and we've got to come to something where, you know, if the people put their money in, that they get the bulk of it back. Don, thank you for speaking up and taking my place. Go ahead.

MR. OTTO: Well, I just think -- I see -- I don't know why anyone would have a problem with the consumer being given an informed choice at the start of the process where what does the consumer want to do. If the consumer wants a guaranteed product, fine; we will sell you a guaranteed product, and here is what you get, and here is what happens if you cancel it or whatever. If what the consumer wants is to have -- and, again, we're going to have to set aside the Medicaid issue. I mean, we need a section that deals with that to make sure we follow the rules. I understand that. But if what the consumer wants is control of the money or 100 percent of the money and the interest and all that, then you have this option. Let the consumer decide what they want. If, like, with what Kim said, if guarantee is what's important to them, great; you choose guarantee option, and

here's what you get with the guarantee option, and it's very -- should be made very clear to the consumer that if you pick the guaranteed option, here is what you are getting and here is what the portability restrictions are and here is what happens if you cancel the plan. And if you want, instead, if what you would rather have is you're going to get 100 percent of the interest, you're going to be able to change funeral homes at will, well, then you choose this option.

CHAIRMAN: Norma?

MS. COLLINS: And I'm just sending a Blackberry message, and I'm not paying attention to what he said.

CHAIRMAN: Well, that's all right. You go ahead and finish. That's fine. You know, there's three consumer groups here, and I think you all need to tell exactly what you think that the consumer wants, which we all know is 100 percent of their money back.

MS. COLLINS: Right.

CHAIRMAN: They'd like to have their interest back and they like portability. And, you know, how would you like to see us address

those issues?

MS. COLLINS: Well, I'm glad that you asked because I was just going to say that with the Funeral Consumers Alliance, we are very much on board with the proposal that Josh has made. So, we are very concerned and really would like to see 100-percent trust. Most of the consumers who have had these issues, as you probably are aware, many members of AARP because they're seniors. And so, that's our concern that we have, that 100-percent trust. CHAIRMAN: And the portability issue?

MS. COLLINS: Yeah. Absolutely.

MR. OTTO: Norma, I have a question, if I could. What do you think your members would feel like that for in exchange for that 100-percent trusting and portability, they could no longer guarantee the price?

MS. COLLINS: Well, you know, with the guarantee, I mean, I think in 2008, I mean, I don't really think we should even be talking about guaranteeing price of a funeral so many, many years down the road with this -- with the economy.

MR. OTTO: Well, right. But how does that help your consumer? Right now, your consumer can come in and, if they want to, guarantee the price of a funeral. And do you want to take that option away from them?

MS. COLLINS: I think there needs to be some education with consumers about what this really means.

MR. OTTO: No doubt, but do you not want -- I mean, just philosophically, do you not want to have the consumer to have a choice to pick a guaranteed funeral?

MR. MAHN: Well, Don, why can't they guarantee it 100 percent?

MR. SLOCUM: Yeah. I think you're setting up a false dichotomy here. I'm sorry.

MR. MAHN: Yeah. We've always guaranteed ours and we've always invested 100 percent in our trust with interest, and guaranteed it, so why can't we? Who is saying we can't?

MR. OTTO: Well, there was discussion just a little bit ago that we ought to get rid of that.

MR. MAHN: Well, there might have been

a discussion, but I'm just asking: Why can't you guarantee 100 percent with interest? I'm just asking you, because I've done it and maybe I'm doing something wrong.

MR. OTTO: If it was a true 100 percent, not -- and, again, a lot of these states say they're 100 percent, but, you know, you take it out of the bank. If it's truly 100 percent goes in and it's truly that the interest stays in there the whole time --

MR. MAHN: Right.

MR. OTTO: And that the consumer can cancel at any time and get 100 percent of their interest back, and they can change to another funeral home and 100 percent of the interest goes, I can't see anybody setting up a plan where you guarantee the prices.

MR. SLOCUM: Hundreds of funeral homes in New York State do it.

MR. MAHN: But why can't the funeral home make that decision? If they want to guarantee them, fine; if they don't, fine. Why do you care?

MR. OTTO: New York State has --

MR. SLOCUM: And they're not the only

one.

MR. OTTO: Well, but in a lot of those states, they've set up a virtual monopoly with one trust company.

CHAIRMAN: Josh, explain what New York does to everybody.

MR. SLOCUM: Yeah. I'll explain my dream that is not going to happen here. New York State requires 100-percent trusting with interest to accrue. The seller is entitled to three-quarters of 1 percent in admin fees. And I do understand that maybe that's not realistic here. Maybe there are a few more expenses. Hundred-percent interest accrual. If the consumer cancels a revocable contract, 100 percent plus interest less the administrative fee for the trust goes back to the consumer. If it's an irrevocable contract, that contract is transferred and reassigned to whichever funeral home it is in full less the three-quarters-of-a-percent fee.

MR. BAKER: Three-quarters of a percent of earnings or three-quarters --

MR. SLOCUM: No. Three-quarters of a percent of the trust.

MR. BAKER: Of the trust.

MR. SLOCUM: Of the trust.

MR. BAKER: Which would not be a big difference.

MR. SLOCUM: New Jersey is very similar. The only difference between New York and New Jersey, New York is the only state that actually prohibits insurance sales for preneed funerals. They're the only state that does that. New Jersey has almost identical laws except they allow insurance sales as an option, as well.

CHAIRMAN: Now, are they guaranteeing the contract?

MR. SLOCUM: Yeah. But it's an individual funeral-home choice. I mean, you --

CHAIRMAN: Some do, some don't?

MR. SLOCUM: Some do, some don't. I mean, you know, my proposal was not necessarily that the law here should tell funeral directors they can't guarantee the price. My proposal is, is this a wise business choice?

MS. GRINSTON: So, are you saying New York makes a distinction on revocable versus

irrevocable?

MR. SLOCUM: As all states do, yes. But not in terms of -- well, like, if you look at this chart here, there's a couple of oddballs where one will say -- Virginia, for example. If the seller sells a price-guaranteed contract, the seller is allowed to keep 10 percent off the top. If it's a nonprice-guaranteed contract, the law requires them to deposit 100 percent. In both cases, the interest must accrue to the account. Obviously, I don't agree with the 90 percent, but there are a couple of different ways that some of these states will address that. But all states, with the exception of Texas, provide either explicitly or don't prohibit, consumers can reassign irrevocable. Irrevocable doesn't mean -- except for in Pennsylvania, because of a bad court decision. It doesn't mean irrevocably tied to the funeral home, it means you just can't cash it out for Medicaid purposes.

CHAIRMAN: Bill?

MR. STALTER: The thing about New York is that -- I mean, this feature about no

insurance makes it very unique --

MR. SLOCUM: Yes.

MR. STALTER: -- in that you won't have an insurance company coming in. I mean, it is truly a trust-only state, and they limit what they can invest in. And, basically, it is -- there are so many hurdles to what we say competition in the form of an APS or Forethought or Homesteaders is that you have to go through the State association, in essence. But since it's the only source of preneed there, it is a monopoly.

CHAIRMAN: I'm sorry.

MS. COLLINS: I just have just one question of Josh. I cannot find the reference to the asterisk, Josh, under Oregon on that chart.

MR. SLOCUM: Okay.

MS. COLLINS: Have I overlooked what reference -- what that asterisk references in your document? You see on the chart where it says 100 percent if not under Oregon?

MR. SLOCUM: Yeah. And I can't recall. I'm sorry about that, but I can't recall what the asterisk means.

MS. COLLINS: Okay.

MR. SLOCUM: I think there might be -- it's some oddity in Oregon. Sorry to confuse you.

MS. COLLINS: That's okay.

MR. SLOCUM: I'll look it up later. I can let everybody know by e-mail.

MS. COLLINS: I just kept flipping pages. I just couldn't find that reference. Okay. Thanks.

CHAIRMAN: Sharon?

MS. EULER: I think we're kind of mixing apples and oranges here because I agree that there should be an option for a guaranteed versus nonguaranteed price, and that the contract should clearly state whether it's guaranteed or nonguaranteed, and that the statute should allow for that. But whether it's guaranteed or not is a totally separate issue from how it's funded. How it's funded can, from what I'm understanding, we're talking about it can be funded through a life-insurance policy, it can be funded through a joint account, it can be funded through some sort of trusting arrangement.

And -- or it could simply be preplanned and the consumer can fund it however they want. But whether it's guaranteed or not guaranteed shouldn't be tied to how it's funded because they're two separate issues. And the funeral home can make the choice and the consumer can make the choice, do I want to do it guaranteed or do I want to be not guaranteed?

CHAIRMAN: Are you praying?

MS. GRINSTON: No.

MS. BROWN: She should be.

CHAIRMAN: George?

MR. CLINE: All right. I won't be long here, but just to let some of the folks know what we do. We trust 80 percent and we keep the interest. However, if someone wants to cancel, they always, and always have and there's no indication anything would change, that they wouldn't get 100 percent back. This solves our portability issues. It's just a simple form that says I choose to cancel my preneed contract. Number two is that is it really fair to the consumer and whatever other entities that are out there that if we guarantee, for example, say, today's prices a

funeral for $5,000, now, like you said, in ten, fifteen, twenty years, that funeral is still $5,000. And it should be the business's intent or choice to whether they want to take that risk down the road to guarantee that contract, is what I'm saying. So, to take that away from the consumer, for an example, the BMW choice, if you could go to the BMW dealer today and give them $25,000 and say, "I'll tell you what. I'll pick up that car in ten or fifteen years," that would be consumer friendly. The same is true with the funerals and the preplanning and the price of the funerals. But if you're funding them with insurance, then guaranteeing to be funded at a future cost, that's only raising the cost of the funerals in the industry.

CHAIRMAN: George, what do you do about the interest of that?

MR. CLINE: What do we do with the interest? What we do, we split it 83 percent into the trust by choice, even though the law says only 80. We voluntarily put in 83 percent. We have commissions, we have overhead, advertising, electric, all that kind

of stuff, too. Then we -- the interest that accrues, then that goes to cover the cost of the funeral in the future. But if they want to cancel, they get 100 percent of whatever they put into the trust, no questions asked.

MR. SLOCUM: But not the interest?

MR. CLINE: Not the interest, no.

CHAIRMAN: Public members? D.J., step up there.

MS. GROSS: Do I need to reintroduce myself again? I'm D.J. Gross from south-central Missouri. Sharon, I think you had said there wasn't a tie between the funding and if it could be guaranteed or not, but I think that may be something to be taken into consideration. If you are -- as a funeral home, you are guaranteeing that you are going to provide that funeral service -- the casket, the vault, whatever it is that you're guaranteeing on, and the consumer agrees to that, and that's what the contract states. But as has occurred around the state where funeral homes have closed their doors, and then there's the consumer with this piece of paper that says they have a guaranteed

funeral. But, in reality, what they have, if they have that, is 80 percent of what they paid in. They don't get that guaranteed funeral. So, it's a guarantee that the funeral home is getting the 100 percent and keeping 20 percent and 80 percent goes in trust. But there is a tie to that because, as has occurred around the state, those consumers are only getting 80 percent and no interest.

MS. GRINSTON: When they cancel.

MS. GROSS: No, they're not canceled because if a funeral home closes their doors, such as happened in Dent County.

MS. EULER: Where the funeral closes its --

MS. GRINSTON: Oh, you mean when the funeral home goes out their business. Okay.

MS. GROSS: The funeral home closed. Those consumers got -- some of the consumers got 80 percent of what they had paid in. And I don't know what their contracts looked like, but I'm pretty sure they probably said they were guaranteed to get a full funeral service, a Batesville casket, and a Wilbert vault. And

what they ended up -- their families ended up getting was 80 percent of what was paid in.

CHAIRMAN: Jim?

MR. MILLER: My name is Jim Miller. We trust 100 percent on all of our preneed plans just in order to have enough money to pay for the funeral whenever it does happen. I think MFDEA did a survey asking about the 100, 90 percent, or 80 percent, and I think there was a large number of funeral homes that actually preferred the 100-percent trusting. What I hear today is all funeral homes are looking for 20 percent, and I don't think that's the case. I think for those of us that trust 100 percent are actually competing against funeral homes that keep the 20 percent and that puts us at a disadvantage.

CHAIRMAN: Good point.

MS. GRINSTON: Okay. If we can talk about trying to pull this discussion together. We've heard the ideas out on the floor. We've heard Representative Meadows' instructions. I can tell you that Senator Scott and Representative Wasson have said the same thing, they would like this group to at least

give them some type of proposal. Understanding that we have people at 100 percent, we've got people still at 80-20, is there a middle ground here? Is there a middle ground that the members of this group would consider suggesting to the general assembly? It may not be ideally what you would absolutely want, but is there a middle ground? One of the things I started to think about is that as we look at this 80-20 funding mechanism or 100 percent, 90-10, whatever it is, that one of the things that I think this group has done is built in other consumer protections that will further protect consumers on the disclosure level, on the investment level, when you talked about what type of investments, on, you know, beefing up the regulation of sellers and providers, the registration/licensing of counselors/salespeople/people with the paper. You guys have done a lot of those consumer protections. Is there a middle ground that we could send over as a suggestion to say that while there are people who ultimately, you know, would officially take the position on

something else, that there is something that would be at least minimally acceptable for purposes of presenting a recommendation?

CHAIRMAN: Todd?

MR. MAHN: Well, as you know, when things go to legislators, there's a possibility of this getting, you know, changed whatever we present to them. So, I think as a representative here and not -- in fact, I just own funeral homes, but I feel more importantly that I'm here to represent the public that, to me, I think with considering what has went on, that we need to consider sending the strongest language we can possibly send and then come back -- if it has to come down, then it will come down from that. And I think we should take in consideration -- I mean, I thought we were -- our first priority here is to protect the consumer, and I think that it's important for us to take our folks that are here today, that are here representing consumers, AARP, and different ones, and maybe ask them just what they think ought to be the information sent up, because that's -- I mean, is that ultimately not what

we're here for? I mean, we've all got each our own ax to grind or whatever, but, ultimately, we're here to protect the consumer. I think it would just be a good idea for us to poll the ones that are here representing consumers to get their opinion on this.

CHAIRMAN: Okay. Let me get Sharon, then we'll go to Larry.

MS. EULER: My suggestion was going to be that -- and we talked about this before -- that the proposal be -- and this seems, to me, to be a middle ground -- that the proposal be 100 percent funding of the cost of the funeral, and then allow a separate fee for administrative expenses, whether that be 20 percent, 10 percent, whatever number, because, that way, we have -- we've put in the legislature's mind that we want 100-percent funding for the consumer, but we also want to make sure there's money to pay the expenses. And so, that if they start playing with a number, they play with the administrative-fee part, and leave the 100-percent trusting of the funeral costs, but allow an administrative

fee on top of that.

MR. STROUD: May I ask a question?

CHAIRMAN: Larry? We'll let you ask one this afternoon.

MR. STROUD: I'm not going to preach. I just want to ask a question to you. I'm Larry Stroud. You just stated 100-percent funded and then for the cost of the funeral; right?

MS. EULER: Uh-huh.

MR. STROUD: Is what you said. And then there will be another fee. Where is the other fee coming from? Another fee; what fee are we talking about here? Do you know what you're talking about?

MS. EULER: Right. That the total cost of the preneed would be 100 percent to be trusted for the funeral costs.

MR. STROUD: Uh-huh.

MS. EULER: And then the funeral home is allowed to charge whatever percentage --

MR. STROUD: Whatever fee they want?

MS. EULER: You know, and we'll mandate it in statute that it's capped at 20 percent or capped at 10 percent or capped at

15 percent or whatever to cover the expenses.

CHAIRMAN: Like a buyer's fee, like when you go to a sale, and you pay -- you know, you get your number and buy something, and they add 7 percent to it.

MR. STROUD: Well, that would seem like, to me, that's pretty high.

MR. MAHN: Well, we haven't set a fee yet, Larry.

MS. EULER: We haven't set a fee.

MR. STROUD: I know.

MS. GRINSTON: I'm working off of Sharon's numbers, but, you know, since we talk about 100 percent, what if 100 percent hits the trust -- and, again, I'm talking middle ground here. You know, this is not absolutely ideal. Hundred percent hits the trust, seller gets reimbursed through the trustee just like everybody else who has an expense. Maybe a capping that administrative expense at 15 percent, but requiring that it be reasonable in light of their services, and then when it's -- if you decide to cancel and split at the end, you also get the interest.

CHAIRMAN: Josh, do you want to --

MR. STROUD: Well, let me -- one more statement then. What's the difference between trusting 90 percent and then the funeral homes hold back 10 percent? Or we give 100 percent to the trust and the trust turns around and gives us back 15 percent? Isn't that a lot of extra paperwork?

MS. GRINSTON: Well, it is extra paperwork, but I think that with that step, you have someone else who is regulated by someone else who has a fiduciary duty to the trust, so you don't just have someone pulling off money before anybody sees -- and I don't mean to make that sound seedy, but before anyone else has a chance to say the consumer paid this much. We have a record of what's paid. Right now, that 20 percent comes in off the top, then everything hits the trust. So, to be honest, there are problems with tracking, you know, how much was paid and whether the 20 percent hit the trust at the right time. But if it goes through a trustee, everything gets to a trustee, so it's tracked, it's recorded, and you've got someone who's got a fiduciary obligation over these funds,

and then reimburses you back for whatever that administrative expense is with the limitation that it be reasonable. That's the way trustees and the Uniform Trust Act and even in the Unitrust Election Act, their expenses must be reasonable in light of the purposes of the trust.

CHAIRMAN: Okay. Josh?

MR. SLOCUM: Thank you. Just to pick up on something Kim said, I think we'd have to be really careful when I see the terms like "reasonable" in statute without any numbers attached to them; that's just wide open for anything. I've seen it abused even if the intention was good. Funeral -- I can't speak for anybody. I think AARP is pretty close with our position. Norma can speak for them. I see this a little bit like the idea in newspaper journalism today, that objectivity means one side gets two lines to say this and the other side gets two lines to say this. And if two people disagree, then the truth is automatically somewhere in the middle. The truth isn't automatically somewhere in the middle. I -- before Funeral Consumers

Alliance could agree to a middle ground, we would have to see and look at actual -- not anecdotal, but actual numbers that would show what a reasonable cost fee was. At this point, we will not support 20 percent withheld. We will not support 10 percent withheld. I can't say because I'm not going to be ironclad and say somebody couldn't make a reasonable argument for some sort of fee, but we certainly will not go that far. And I don't mean to be obstructionist, but I feel like consensus sounds nice, but sometimes the nice thing that makes everybody get along is bad public policy, and I really think that the consumer interest needs to be far better protected. And I was actually surprised when I came in here -- pleased and surprised. I don't know everybody's opinion here, but I was expecting that I was going to have to wear a Kevlar jacket coming in from Funeral Consumers Alliance, and that everybody in the funeral business would say, you know, "What the heck are you talking about, 100 percent?" I've talked to a lot of folks who have been in funeral service. I'm surprised at how many

want 100-percent trusting, and I'd like to see that reflected, as well. And I think before either side just gives up and says let's have consensus, I think we need to talk about this more. So, no, we won't support that.

MS. GRINSTON: And I do appreciate that, Josh. I can tell you the realities of our legislative process in Missouri because one of the issues that really hung us up last year, even though we were moving kind of fast, is that the crucial issues, like trusting and fees, Don, those people who are over there, Mike -- well, yeah. Some -- you know, our lobbyists back there, we couldn't reach an agreement. And so, what happened was we got nothing. And so, we spent another year with 436, as horrible as it is, as bad as it is, with complaints that we can't process, consumers we can't help, bad people we can't put out of business while we did that. The reality of our legislative process is -- I wish we had -- I could guarantee you the time -- and I am doing Connie's job just a little bit here. But I can tell that if we get over to the general assembly and everyone in this

room is at a different place and everyone in this room is pulling different ways, we run the very real risk that we will go through another two or three years with 436 exactly the way it is. And then not only do you have more consumers at risk, you have the chances -- and I'm going to be quite frank. You have the chances of a lot of bad things happening that we're seeing today recurring tomorrow. I'll say this -- and, Josh, you haven't heard this speech. I'm not going to do the whole thing -- I promise. But right now, the entities that people are asking to be criminally investigated, if they showed up tomorrow and asked for a preneed seller's license, we would have to give them the blessing of the State; we have no recourse to do otherwise. If we are at the point of stalling to a point where we may not get this fixed, I think -- and we've got to think about this, and realistically. This will hang this up. Don, I don't know if you disagree, but these issues will hang this up at the legislature. Sometimes, you know, you've got to -- you can take what you can get, and if

everybody decides that we make a comment that this is a compromise position, but it's not what everybody loves, and you guys exercise your rights, do whatever you need to do at the capital, with Representative Meadows' caution, I'd rather do that than run the risk of let this getting hung up at the general assembly and we do a year with consumers being held vulnerable, unprotected and -- because last year, we could have at least had rule-making authority in there. We could have at least had disciplinary authority went up there. The big issues caught us at the last minute, and we're here again.

MR. SLOCUM: What is the position of the State Board members here?

MS. GRINSTON: The State Board is on record. The last vote of the State Board on record was 100 percent, and everybody understood that.

MR. SLOCUM: Does that carry today for those Board Members?

MS. GRINSTON: I don't -- the Board is meeting in August. The Board has not taken an official vote on it, and since -- and my

understanding is that they will not be taking an official vote on it until this process is through, but they were at 100 percent, and that's what we sent off to the legislature and that's what they've been informed.

CHAIRMAN: Bill?

MR. STALTER: When I hear 100 percent versus, you know, some lower percentage, I mean, basically, a lot of times I hear the difference between proactive and what I call more of a passive preneed. I mean, the passive preneed at 100 percent, I mean, it works. But for those who are proactive, have some kind of a sales force out there, really, you're working against the insurance companies, and there is a cost to put that on, and what's the fair cost? I don't know. It's somewhere between 10 and 12, 15 percent. But, you know, I'm not -- and it's hard to say what that cost is. Where I flipped over and look at Iowa, Iowa is an 80-20 state. I talked to Dennis Britson and see how that works for them, and they've had to make a lot of modifications. And what they feel -- what they have right now, 80-20 works, but it's a

lot different from our 80-20. I mean, the first key thing is full income accrual. Now, they do allow a penalty on a transfer, but it's very small. The other aspect is on 80-20, it's 80 percent of every payment that goes into trust. In other words, you cut 20 percent of each payment, so there's money going in the trust right away. But they are also looking at terms of prohibiting insurance and making sure that that fund is diversified. But, in a sense, you know, it is -- there are a lot of compromises in that bill -- in that legislation compared to what we do.

MS. GRINSTON: Legislation is like sausages; you don't want to see it being made.

CHAIRMAN: Sharon?

MS. EULER: I like Kim's idea of requiring all of the money to go into trust and then be distributed back out of the trust by the trustee. And I think we could put a cap on that so that, you know, reasonable and necessary, not to exceed X amount of dollars. And that would also allow for payments to be made directly into the trust, which would solve some of the problems we've had.

CHAIRMAN: Norma, go ahead.

MS. COLLINS: I just wanted to say on behalf of AARP, in terms of making that decision today, Kim, I hope that we will have an opportunity to at least -- I want to take that language back to our policy folks, because you know where AARP stands in terms of 100-percent trusting. But trying to reach some middle of the road, I know that sometimes we don't always get our way, but I still would like to have some other policy folks at AARP weigh in on this before I leave this meeting and say, yeah, it's cut-and-dried that, yeah, we reached this compromise.

MS. GRINSTON: Sure. Sure. Definitely. And I think it's something we could also clarify, that whatever we're doing, we're doing for just drafting language purposes. My understanding is that this draft of the consensus group probably won't be final until the second or third week of August.

MS. COLLINS: Okay.

MS. GRINSTON: Moving closer to September. We understand that the committee will -- the joint committee will be convening

after August 28th, and so, I think that's an excellent idea because we want everyone's members to be involved and understand what we're doing.

CHAIRMAN: Bill?

MR. TRIMM: I understand the value of compromise, but after hearing this discussion and hearing Josh's presentation and a number of funeral directors around the table and out in the audience, I guess I still lean toward Josh's proposal that it be 100 percent. I -- you know, a compromise is great, but we don't know what that compromise is, and we're talking in relative terms here. Kim, I can understand your point, but what are you talking about? What --

MS. GRINSTON: I don't know if we want the position to be all or nothing. You either give us all or give us nothing, because nothing is a bad place to be for 436. Or I can tell you when we went over to the general assembly -- everybody who worked these halls last year, you know this -- we had to explain funeral contracts. We had to explain what is a vault. Now, we've had legislation -- you

guys know this -- that will get amended two minutes before session is over for the year, and at the end of the year, everybody is thinking how in the world did that get in there, because we are going to be asking. You know, people who are real estate people, people who are -- you know, God bless the -- we have a lot of farmers over there who don't interact with funeral business. If those -- if that's what we want, the general assembly making this decision, then let's let the general assembly make the decision. But if there is a compromise, if there is -- and maybe there is not. If we are at an all-or-nothing standpoint, then let's just tell them we're at an all or nothing, either leave us where we are or you guys do it yourselves. If that's what we want to tell them, then I think we probably need to clarify that.

MS. DUNN: Don.

MR. OTTO: Yeah. As far as whether or not we do 90 percent goes in the trust or 100 percent goes in the trust and then 10 percent comes back out, you know, I mean, that it

would change where we are on the chart of all the different states, I guess. Keep in mind we're not just talking about third-party sellers, though, we're talking about funeral homes that are also a seller. And so, it's the funeral home that's paying itself the 10 percent. I mean, maybe it gives you a little bit better tracking, but I'm not sure how much. As far as it -- keeping aside the semantics of whether it's 90-10 or 100 then 10 out, a true 100-percent solution where 100 percent of the money goes in the trust and it stays in the trust and there is no -- you know, I'll just call it the true 100 percent. And people who were over there next -- this past year, please feel to correct me if you think I'm wrong, but I think that's a nonstarter.

MS. GRINSTON: Well, they told us it was.

MR. OTTO: At the capitol, so it's just --

MS. GRINSTON: And, Don, let me add something to that. One of the representatives looked at us very firmly and said, "If I do

100 percent, there are businesses that I am putting out of business." They're third-party sellers. They're third-party sellers. If this is all you do, if this is everything that you do, Josh, if you're not a funeral home, you have no other enterprise, and you're not allowed to make a profit and you have to pay their expenses, that no business model, funeral home or anything else, will ever survive on that.

MR. SLOCUM: When a funeral home is selling their own preneed, why are we encouraging an extra cost added onto the price of the funeral for the third-party sellers, unless I don't understand something?

MS. GRINSTON: No. No. I think that's a different conversation. I'm talking about people who are in business just as third-party sellers.

MR. SLOCUM: Okay.

MS. GRINSTON: And what a representative told me is, "I don't put people out of business. I don't put Missourians out of work. Now, if you would like me to put them out of work, find somebody else to do

it." That's the way the general assembly receives it when we go over there. You are asking me to shut down companies in a bad economy which is -- I wish Connie was here -- which is exactly what we were told. He said, "Are you telling me that I'm going to be in the Post Dispatch tomorrow morning for shutting down a million-dollar company and putting people out of work in this economy?" And he said, "You tell me. Tell me how they survive, you know, these third-party sellers," and we do have them regardless, but we do. It's a question that we need to consider. And like Don said, I want to let you -- we have gotten very clear instructions from the chair of the PR committee, from the chair of Government and Finance, and from some other entities that 100 percent may not be workable, but that doesn't stop the group from saying, if that's your choice to stick there. My only concern is, I want to make sure that if we're all or nothing, let's say we're all or nothing, but make sure that that's the position that you want to be in.

MS. DUNN: I'm sorry. Linda was next.

MS. BOHRER: Oh, I just want to ask a question. On the states that are 100 percent and interest accrues to the trust account, where do the -- are there no third-party sellers in those states?

MR. SLOCUM: If you're talking about third-party sellers the way Missouri does them, I'm not aware of -- there may be some in other states, but I'm getting an education about how funerals are sold here -- a startling education. But in a lot of cases, in other states, funeral homes will have their own sales staff who go out there and make the calls on people's houses or who meet with the families who come in. I can't tell you how many other third-party sellers there are, but it does not -- anecdotally, off the top of my head, I have not seen what I'm seeing here in Missouri, so this seems unique to me.

MS. BOHRER: And as the director of the Department of Insurance who doesn't have a lot of history with this, for funeral homes that do what Josh said -- and I assume that that would be the bigger funeral-home organizations in the state, where they -- do you employ a

specific staff that that's all they do is deal with -- whoever? I know Kutis is a big --

MR. MEIERHOFFER: The answer is yes.

MS. BOHRER: Yes, they do. So, you have overhead within your organization that is specifically aligned with the sale of preneed.

MR. MEIERHOFFER: (Inaudible.)

MS. BOHRER: So, my question is then: How do you, if you don't have any access to the funds coming in and you don't have any access to the interest, how do you cover that overhead within your funeral home for that --

MR. MEIERHOFFER: You don't.

MS. BOHRER: Other states then have --

MR. SLOCUM: If we want to answer that, that's a reasonable question. If we want to answer that -- I can see some eyes staring at me. Tell me how you're going to answer it. Well, let's do a little homework. Maybe people put a couple proposals together, but we've got a whole list of states here that we can ask that question of funeral directors themselves. We can talk to people in these states. Ask the business owners themselves. They would give you a better answer that I

could.

MS. BOHRER: Okay.

MR. SLOCUM: But they do somehow.

CHAIRMAN: Okay. Mike? Oh, wait a minute. You're in the middle of a rebuttal here. Go ahead.

MS. BOHRER: Well, I just -- I'm familiar with Kutis just because I'm from St. Louis and I know you're a very large funeral-home operation. Do you have specific staff?

MR. CLINE: We have specific people who that is their only function. I mean, they are licensed funeral directors, and if they needed to take out a funeral or make an at-need, then they could, but we do not and have not for a long, long time ever had any third-party sellers.

MS. BOHRER: And is that where your 17 percent that you withhold from the trust covers?

MR. CLINE: Right now, that 17 percent, that those people are not on salary, they are on a commission basis, and that takes care of them and it takes care of a little

bit for the manager to kind of watch everything, and the rest goes to, you know, secretary, mailing, advertising, you know, because you have to do a little advertising and things. So, we don't really feel that that's that much. And then when someone does pass, then out of that 20 percent -- or the 17 percent that we leave behind, then not only does the bank, the trust account actually release the funds after a death certificate or a notarized performance of burial given to us, but then also the Kutis prearranged department also writes a check from their account to the funeral home to cover the amount of the funeral, so that's how -- I mean, that's how we do it, so we've got four or five people, but, you know, we don't knock on doors and all that kind of stuff, either. We just -- you know, if they want to come, they want to come, so --

CHAIRMAN: All right. Mike?

MR. MEIERHOFFER: I really think when you make a trust or the only thing the State can do is the 100-percent trusting, you don't have the ability to -- I think it's

anticonsumer. I don't think the person has an opportunity to get what they want unless they walk in the funeral home and take it away. That's my feeling. It does take some money to operate. And then you get into the thing that Bill mentioned in terms of proactive and nonactive. You've got two separate types of processes that are in play here. I'd love for it if people just walked into my place and take this away from me, but it doesn't happen that way, in general. People come in because there's an absolute need or there's a medical emergency or they're spending down for Medicaid. But the opportunity for people to really get into this program has to be taken to them, and it has to be explained to them. The other thing that you get into is when you're talking about putting this into trust, we're layering things again, and you're also delaying payment to people like ourselves who have to pay our staff. So, if you take the money, it goes in the trust, has to be taken back out of trust, you get into more administrative costs and you certainly delay the time frame to get to the operational

payment of people. That's what it really boils down to.

CHAIRMAN: Bill, you were next.

MR. STALTER: Me. I'm next. You've mentioned New York when you asked about are there other third-party sellers out there. Generally, you have one in every state. It's a state-association master trust. A lot of them are structured so that they're an independent corporation and provide administration, and they charge it back to the trust. And New York is kind of that unique. When you get back to this, it's a monopoly, and it's a huge trust.

MR. MEIERHOFFER: Anticompetitive.

MR. STALTER: And it can cap its fees at 75 basis points because it has several hundred million dollars and that 75 basis points goes partly back to the association, and it uses it for educational purposes, for staff, for lawyers, for contracts, and so forth. But it is unique in that it has -- I mean, I don't know how many hundreds of millions of dollars that it provides the funding that otherwise, you know, you don't

have it from the 10 percent or the 15 percent that you take up front.

CHAIRMAN: Josh?

MR. SLOCUM: Yeah. You are correct about that, Bill, which is one of the reasons why, you know, maybe three-quarters of a percent, which is the gold standard as far as I'm concerned, maybe that isn't workable. Maybe we have to look at something else. But I would like to point out, with all due respect to the funeral directors here, this is not a personal criticism. But let's remember, this is not a community service when you go out and send out a preneed person. This is not getting people into a program they need. This is to build your business, which is perfectly legitimate, but I don't like the characterization that we won't be able to go out and serve the community with something they really need unless we can do this. Let's call it what it is; it's proactive sales, and there's nothing wrong with that. We're a free-market economy. But this is not a charity for the public, and it is not to be considered that if we don't have a sufficient

number of sales staff to knock on people's doors to sell this, that somehow we're cheating the public. People need to do funeral planning, but this is sales, it's not a community service.

CHAIRMAN: Gerry?

MR. KRAUS: Gerry Kraus, Homesteaders. Just two quick comments. On the third-party-marketer position, we work with third-party marketers, some of the largest in the country. And I do know of one other example. In Colorado, I think they allow independent sellers who are not funeral providers. But I'm on record here as saying that I think you need to get those third-party sellers working for funeral homes rather than vice versa. One of the problems that we had recently here was a nonprovider seller got licensed and went out and sold funerals and subcontracted for the providing part of it. We need to get that equation in order so that you have providers at the top and independent third-party marketers selling for them at their discretion. So, put funeral directors in the driver's seat on the sales. My other

comment comes out of the Iowa question. They're kicking around this 80 percent, 100 percent, and have for a couple of years. One compromise position -- it's not easy, but you might talk about a graduated scale. Go to 85, then the next year, go to 90. Because part of the objection that you're hearing here is the trauma of the shock. If you can try and reduce that shock, 5 percent change a year, it's not an easy change, but it makes it piece by piece easier.

MS. GRINSTON: That concept is not foreign. One state does have a -- if it's been in place for less than, I think, a year, you get this much back. If it's been in place for a little bit longer, you get this much back, with the concept being that as -- the longer you maintain it, it changes exactly how much you're getting back. So, if it's less than one year, you get back one point, more than one year, you get back another point. But I have seen that, and it may be Colorado.

MR. MEIERHOFFER: But, basically, a vesting schedule.

MS. GRINSTON: Sort of, yes.

CHAIRMAN: Don?

MR. OTTO: And for those that might not be familiar with it, Senator Scott's last proposal on this issue at the last legislative session had it going to 85-percent trusting in year one, and then over the next five years, it would slowly go to 90-percent trusting, so in the second year -- I mean, it's 86 and then 87, 88, again, to try to lessen the shock of going straight from 20 percent to 10 percent. That was his last proposal. I mean, for what it's worth. There wasn't really enough time to get that really debated and bedded well. But the one thing I do know, and I'm very confident of, is -- and, again, we did survey our members. And I'd say the overwhelming majority of our members thought it should come off of 20 percent, that 20 percent was too much. Between that group, it split between those that think it should go to 90-10 and those that think it should go to 100. But I don't see 100 happening over there, just because I know -- unless there's a complete revolution this November, I know who

the committee chairs are going to be, and I know what they think and what they've said, and I don't see 100 percent happening, like it or not.

CHAIRMAN: Brad?

MR. SPEAKS: I'm just curious. There's a lot of bright people at the table and -- well, you're all bright; let me put it that way. But I'm just curious, and, you know, Bill is maybe the financial expert along with some of our banking folks. And I'm just curious why this group of intelligent adults, never mind the industry stance that each person represents, would encourage this sort of deficit spending towards the future, because that's what we're saying. We're saying that funeral homes should go on the hook, even firms of a small to medium size, which Missouri is mostly made up of. If they're trusting 100 percent, they still have shortfalls when the funeral comes due. Are there any funeral homes that have not experienced that? We're all experiencing shortfalls, no matter what; right? Okay. Why are we encourage that? Why would our official

stance be that's the best direction to go for the consumers of Missouri; let's encourage deficit spending? So, Bill, is there another way? Or anybody else. Is there another way to do this to where, at the time of need, there is no shortfall for the funeral home, because that's the true win-win for the consumer and for the businesses.

CHAIRMAN: Yeah, Linda, and then we'll take Todd.

MS. BOHRER: Is there a way to facilitate 100-percent funding, because I heard the same thing Kim did when we were in this big group meeting over in the Capitol building, that 100-percent investment wasn't going to fly. Is there a way to achieve 100-percent investment and not put businesses out of business that are already operating and functioning in Missouri? And I guess I would defer to those that are in the room that are the third-party sellers. Is there a way to facilitate 100-percent investment and keep third-party sellers still in business?

MR. McCULLOCH: No, ma'am. There is no way.

MS. BOHRER: Not without a fee?

MR. McCULLOCH: There is no way. How could you?

MS. BOHRER: I don't know.

MR. McCULLOCH: You can't. I mean --

CHAIRMAN: Todd?

MR. MAHN: Well, my question is, is if -- when this all went down and we sent the bill that we worked on over there, and I think everything happened so quick and they slowed things down and wanted a committee put together. I don't know if there's any particular things in it that made them not do the new 436. So, personally, I'd rather have it on their hands, if we went less than more. If they want to decide to knock it down, they can tell their voters why they knocked it down. And, you know, the thing I don't -- I lost my train of thought there. But the thing I'm trying to figure out here is, you know, we're trying to figure out what's best for the consumer, but we're not listening to the consumer advocates here.

CHAIRMAN: Oh, I have. I have.

MR. MAHN: I mean, so if a majority of

-- if a consumer is saying they would like to have something, I guess I'm scratching my head on why we're trying to figure out if something else would be better for them.

MS. SPEAKS: Follow up with Norma who, before lunch, said something along the line, and we kind of went on past it -- said something about, well, I'm concerned about how that works for businesses. You said something, because if we are losing money, and it had to do with my comments that said the consumer ultimately pays. If their funeral home shortfalls, the consumer pays.

MS. COLLINS: I don't think I said that, but go ahead.

MR. SPEAKS: Somebody did. Somebody did. You know, I think Mr. Slocum understands this. I know several others at the table intellectually get it. If there are future shortfalls, that is what costs the consumers money. In other words, we're saying to society at large, everybody has to pay for the five people that took prearrangements out; all right? Are you with me?

MR. MEIERHOFFER: So, you're proposing

this?

MR. SLOCUM: Yeah. Insofar as it's going to affect -- yeah.

MR. SPEAKS: Okay. Well, I'm just laying out the framework saying --

MR. SLOCUM: It's going to -- prices are going to go up. I agree with you. It's deficit spending. It's irresponsible bookkeeping, as far as I'm concerned.

MR. SPEAKS: Eventually, that's -- you know. And because Consumers' Funeral -- yeah. Consumers' Funeral or Funeral Consumers Alliance has, you know, been proactive in illuminating the various pricing structures of organizations, at least in the Kansas City area. One of the things that drives funeral prices higher and higher and higher is funeral homes having to make up these shortfalls. There is no magic pot of money, so then to AARP -- I thought that's where you were going earlier. Maybe I was mistaken.

MS. COLLINS: No. But what I was going --

MR. SPEAKS: But that ultimately harms the consumer.

MS. COLLINS: Well, what I was going to say, the comment that you made before lunch was that with these shortfalls -- and I'm pretty sure it was you standing there at the mike -- said that those costs will be passed on to the consumer.

MR. SPEAKS: Eventually. Uh-huh.

MS. COLLINS: Yeah. And that's what I remember you saying.

MR. SPEAKS: Yeah.

MS. COLLINS: I don't remember saying what you said that I said.

MR. SPEAKS: Well, I thought you had made a comment. I thought -- I was jumping to conclusions, but it seems clear to me that an organization like AARP, trying to protect the interests of all people of a certain age, if they're all being penalized through --

MS. COLLINS: We're intergenerational.

MR. SPEAKS: Huh?

MS. COLLINS: We're intergenerational.

MR. SPEAKS: Intergenerational. Sorry. I turned 50 this year and I'm waiting for my packet. You know, all consumers are going to have to pick up the tab for that.

So, I come back to the thing about deficit spending. Why are we encouraging that? Would we say to young people, "Best thing for you all to do is to go as deep in debt as you can for the future"? You know, that would be --

MR. MAHN: So, what are you proposing, Brad?

MR. STALTER: I'm lost, too.

MR. MAHN: What do you propose?

MR. SPEAKS: I would like to outlaw guaranteed funerals in Missouri.

CHAIRMAN: Sold.

MS. EULER: All in favor? Can we take a vote on that?

CHAIRMAN: Hold on. I'd like just -- how many people would say let's just do away with freezing the cost of the funeral?

MS. COLLINS: And I did say something about guaranteed funeral?

CHAIRMAN: Hold up your hand. I'd like to see. Why should we guarantee funerals?

CHAIRMAN: All right. Larry, real quick.

MR. STROUD: I have to agree with what Brad said, you know. I think it's really very

important. And that would put everyone on the same playing field. If there was no guarantee that he wouldn't be running down to the competitor, this guys is going to guarantee the 80 -- you know what I'm saying? We'll all being in the same playing field. Nobody has an advantage over anyone else. The only thing you're going to have different would be however you've got yours priced in the first place, and that's it. A hundred-percent trusted, interest goes with the plan; portability, that's not an issue. Bam, it just goes. If you want to cancel, no penalties, let it go. We get a -- and there's no guarantee on your funeral -- no guarantee. At the time of need, it could cost you more money. That'll help take care of our inflationary problems down the road. Now, if there's going to be a little fee come out of this, like she said a while ago, 5 percent maybe coming back from the trust or whatever, whatever you decide on, then that would be all -- we'd all be in the same boat. What do you think, Bob? No good?

MR. MAHN: Hey, Larry? Is that an

official statement of the president of MFDEA; correct? On the record?

MR. STROUD: Yeah.

MR. MAHN: Perfect.

CHAIRMAN: Okay.

MR. STROUD: That's bad then, huh?

MR. MAHN: I like it. No, I like it. I like that. I like that.

CHAIRMAN: I've got my official attorney here. She wants --

MS. GRINSTON: No. His general counsel is going to kill -- no, I'm joking. But one of the things I can tell you from the insurance standpoint, and this is the reason why my questions and my frame of reference may be a little bit different. When I was with the Department of -- well, I still am. When I was doing the insurance side of the department, one of the things that we always focused on was financial solvency. That was the purpose of regulation, to make sure that this company stands ready to fulfill its obligations when the obligations become due. Having said that, which is the reason why insurance doesn't have, out of probably any

line, where you come back 20 years and you've got to take all your money, take everything, interest, everything goes back, because you can't underwrite for that risk. And they make sure that people are underwriting so that you stand financially ready. I think -- and when we talk about consumer choice, it's one of the things -- I think it's important for the consumer to have an informed choice because I think that when you talk about options, you want to make sure that you also are helping this entity be financially solvent when I am ready for this funeral. Because if I establish a system where I am getting guarantees, however -- or forget guarantees, but we've got a funding mechanism, however, it increases the likelihood that you will be bankrupt in 20 years or you will be bankrupt in 30 years. You can't run a business for no profit. And so, if you tell me, would you like to do business with a company that probably is going to be bankrupt in 20 years, or would you like to do business with a company who may have a portion of your money -- and I'm speaking as a consumer now, but

we're going to make sure they stand ready. Insurance companies, that's what they do from the insurance side. They make sure that, you know, you're not overcharging the customer, you're not overtaxing the customer, but that this company will stand financially solvent to do what it needs to do. And I think what -- when you talk about funding mechanisms, make sure you are not guaranteeing bankruptcy even though you're giving some protection in the short run, because I think sometimes the funding mechanism might.

MR. MAHN: Well, Kim, you can't really compare a trust to insurance. It's just two different businesses.

MS. GRINSTON: No. I'm sorry; I didn't mean to compare trust to insurance, but I'm talking about the business model, you know. If you have a business, I need to --

MR. MAHN: The trust business model? Are you talking about in the funeral home or third party?

MS. GRINSTON: Trust business. No. Even if you're just a funeral home. Let's start with a funeral home. If you have a

funeral-home entity, and you create a system wherein you are required by law to possibly lose money, you've got a problem.

MR. MAHN: Well, you've already -- they're already losing money.

MS. GRINSTON: Yeah. And that's what we're trying to fix. That's what we're trying to fix. Let's put them in the position where they are not bleeding -- losing money, because if they are losing money, there is a chance where, when the customer stands ready to provide, there's a chance that you won't be there because you're not financially solvent.

MR. MAHN: I think Jim made a motion on do away with freezing the costs.

CHAIRMAN: I can't make a motion. I'm the chairman.

MR. MAHN: Or not a motion, a vote.

CHAIRMAN: Let my public member speak here.

MS. GERSTEIN: Well, I was just appreciating what Kim was saying right now, and it's a necessary comment, especially in today because everybody is losing money today. I mean, we've got banks closing. But, anyway,

I need to ask a question because -- and this -- and I'm not attacking anything. I just did not understand this when a comment was made a little bit ago. We are one of the few states -- somebody said we're one of the few states that allows third-party selling? Other states don't allow that?

CHAIRMAN: Josh?

MR. STALTER: Jerry, I mean, you can correct me on this, but there -- a lot of states allow it, but it's the relationship. We were talking about being a primary obligor or as an agent. And a lot of states basically say the third-party seller has to be an agent of the funeral home; therefore, you know, the funeral home has control over the transaction, but what's so unique in this one is that the third-party seller can be the primary obligor in control of the contract, so --

CHAIRMAN: Okay. Does that answer your question, Joy? I mean, that --

MR. STALTER: And Joy made -- we still see it in a lot of states in the sense that it's the master trust, the state-association

trust. And in New York, the thing about it is it's such a big trust, it really has kind of a dominant position with its funeral directors, and it often dictates to them about how they're going to do things, which is a thing that you're not seeing that from state to state, and it's a different kind of situation.

CHAIRMAN: Don?

MR. OTTO: Just for those that might be lost with the discussion we just had, current law, of course, does not require a funeral home to guarantee a contract. If that impression was left, that should be corrected. I checked with Scott Gilligan yesterday on this issue, the general counsel of the National Funeral Directors Association. Based upon their most recent survey, there is no state that prohibits a guaranteed contract if the funeral home wishes to do that, and there would be severe legal problems in putting in a piece of legislation that a funeral home could not guarantee its prices.

MS. GRINSTON: FTC. Sorry. I had to say that.

CHAIRMAN: Yeah.

MR. OTTO: That's one -- there's one of them right there. But just even going beyond the FTC, to say in a piece of legislation, sorry, you cannot contract for something that you want to do is a -- there are varied and severe legal problems with that, even if you like the idea.

CHAIRMAN: Josh?

MR. SLOCUM: Well, Don just brought up a National Funeral Directors Association. And if this is something that people are getting hung up on, and I hear that, despite the disagreements, you know, people are coming at this trying to do the right thing for everybody. They don't want businesses to go out of business. I don't want that, either, even if I'm holding a hard line for the consumer; okay? I don't want that, either. But remember that National Funeral Directors Association, frankly, after being dragged into it for 15 years, has turned around and taken a really responsible national position. They're behind 100-percent trusting. They're behind 100-percent portability. If -- you know, if

it's not convincing from somebody like me or somebody from, like, AARP, is there somebody that we can assign who will talk with the NFDA board members and say how do your members do this in the states that adhere to your code? There's got to be answers out there from real people out there. So, why not bring NFDA in on this and ask their policy board or ask their people who are out there representatives at large. I'm sure they'd have something to offer to it.

CHAIRMAN: Good point. Anybody else? We've about wore it out. Well, let's just take a vote. How do you want to vote; like, portability first?

MS. GRINSTON: Why don't we just go ahead and do what we did before. Let's poll the table on where you are. If we can't reach a consensus, we'll just tell the general assembly no consensus on -- well, the trusting issue will relate to the refund issue because if you don't know how much to trust, then we can't do an agreement on refunds. That is going to relate to the cancellation issue which will relate to the portability issue.

So, under those -- I think those five things, I think, personally -- and maybe someone else can let me know if I'm wrong -- it's all tied together. You've got to know what's going where before you talk about refunds, canceling, portability, and everything else. And if it is that we cannot reach a consensus on that, then -- because I think we had a good round of it last week. We've thought about it for ten days. You guys went to lunch and everything else, and I think we've had a good discussion, had good things brought to the table. But are we at a position where we just have to tell the general assembly that this is not something we could reach an agreement on and just not have that in the consensus draft?

CHAIRMAN: Joy?

MS. GERSTEIN: If we do that, we stand to have a lot of problems with this.

MR. MEIERHOFFER: Okay. Let me try something.

CHAIRMAN: Okay. Mike?

MR. MEIERHOFFER: Let me try to make a couple of motions here.

MS. GRINSTON: Go.

MR. MEIERHOFFER: And I suspect, hopefully, that maybe the two motions I'm going to make are going to be defeated, and then we'll find something in the -- I make a motion that we keep the law just as it is -- just as it is. Is there a second for that motion?

MS. EULER: No. Totally and completely, or just on the 80-20?

MR. MEIERHOFFER: Just like it is. 80-20, and just like it is.

MS. GERSTEIN: Leave it exactly like it is?

MR. MEIERHOFFER: Is there a second? Okay.

CHAIRMAN: Now, we're talking about the whole --

MR. MEIERHOFFER: The whole thing.

MS. EULER: Are you talking about the entire Chapter 436?

MR. MEIERHOFFER: I mean, we're -- I'm going to get -- I'm trying to get this out on the table, and maybe this is the way we ferret it out.

(Several people talking simultaneously.)

CHAIRMAN: George seconded it.

(Several people talking simultaneously.)

CHAIRMAN: Okay. All in favor of leaving 436 just like it is, raise your hands. Is that two?

UNIDENTIFIED: Oh, the whole thing?

MS. EULER: The whole thing.

UNIDENTIFIED: Or just the trust category?

MS. EULER: The whole thing.

MS. BOHRER: No. No. The entire chapter with absolutely no changes.

MS. EULER: The entire chapter.

MR. MEIERHOFFER: Okay. All right. So, that's been soundly defeated. Next motion. The next motion is it's 100 percent to the trust, and interest accrues, and portability to all, and with all of the things that we talked about in terms of refund, refund 100 percent plus interest, cancellation and cancel anytime, portability, they can go anywhere they want to go, accrued interest, everything you can possibly do for the consumer. Do I have a second?

MS. COLLINS: Second.

CHAIRMAN: Now, wait a minute till we hand the discussion. She's asking what about fees.

MR. MEIERHOFFER: You have to have a second to get a discussion, so do we have a second?

MS. COLLINS: I did the second, so now you can have the discussion.

MS. GRINSTON: You got your second.

CHAIRMAN: You got a second.

MR. MEIERHOFFER: Yeah. There's the second. You can have a discussion, yeah.

CHAIRMAN: She had a question.

MS. WARREN: I said, what about fees? I mean, you said everything. Fees are in that; right.

CHAIRMAN: Did you mention fees in that?

MR. MEIERHOFFER: Sure. Fees are in there, too. Fees are in there, everything, the whole kitchen sink, everything.

CHAIRMAN: Now, who seconded that?

MS. COLLINS: I seconded so we could have a discussion.

CHAIRMAN: Okay. Now, he's amending his --

MR. MEIERHOFFER: His motion to include these, and then second.

MS. COLLINS: So, we can have a discussion, yeah. That's why I seconded.

CHAIRMAN: Right. Now, okay. And she asked and that was the only discussion we're having, apparently. Apparently, because nobody else said anything. So, he's amended, you're still a second? All right.

MS. RUSSELL: Clarify that motion. So, you're saying fees taken out of the trust, you know, fees to pay for the administration of the trust; is that what you were adding?

MR. MEIERHOFFER: Anything you want. Fees in there, everything you can -- the whole kitchen sink.

MS. COLLINS: He just said fees -- he didn't say fees taken out of the trust, but he said fees.

CHAIRMAN: Well, I think Mike's got an idea here. Let's just go with the pure sense of -- okay.

MR. MEIERHOFFER: I'm taking the two

ends of the spectrum.

CHAIRMAN: Okay.

MR. MEIERHOFFER: How many are -- call for the vote, Mr. Chairman.

CHAIRMAN: Yeah. Let's take his first motion -- don't put any fees in there, but you're going to put 100 percent in trust, you're going to put back the interest, it's portable, the whole bit. Okay. And then she seconded it. Okay. All in favor of that, raise your hands. Okay. We've got one, two, three, four, five, six, seven. Am I correct? Okay. Those against it?

MS. BOHRER: Because that didn't have any fees in it?

MR. OTTO: Yeah. There's no fees, there's nothing.

MS. GRINSTON: One, two, three, four, five, six, seven, eight, nine, ten. I think you got --

CHAIRMAN: Okay. I think that was defeated. Now, where are you going, Mike?

MS. GRINSTON: You're on a roll, Mike.

MR. MEIERHOFFER: Now, we've got to get down to where it really matters, and that

is how we compromise on getting this thing going. So, we can start with 85-15, as far as portability. So, I'm going to say 85-15, as far as -- and cancellation, people would receive 85 percent back. Portability, the portability is there; they can take it wherever they want to go with it, across the street, wherever it may be, and the accrued interest goes to the seller. What else am I missing? Refund -- refund goes back to the person without interest. 85-15.

MR. MAHN: Jim, can I ask a question real quick? I think on the last one we just voted on, I think a lot of people -- I heard Don say this because there was not a 5-percent, like, fee -- capped fee put in that. So, I'm just wondering, if we backed up to that one and put a 5-percent capped fee on fees, what the vote would be.

MR. MEIERHOFFER: I've got a motion on the floor. Let's stay with it, if we can, and we'll go back into that stuff. We can play this all day, so --

CHAIRMAN: Who wants to second that?

MS. DUNN: Mary?

MS. ERICKSON: Well, actually, I don't. I want to take Todd's suggestion one step further. I think Mike is really onto something great. Rather than breaking it down into percentage of fees --

CHAIRMAN: Yeah. Let's do go back.

MS. ERICKSON: -- let's just go back to everything plus fees and see how the vote shakes out. Thank you.

CHAIRMAN: Let's try that one, and then you go do a breakdown. Would you withdraw your motion?

MR. MEIERHOFFER: Sure.

CHAIRMAN: Okay. Now, what he's saying now is 100 percent, portable, return the interest, principal, but we're going to have fees added to it. You can put a fee in there to recoup your overhead.

MR. SLOCUM: A fee of -- what's the cap on the fee?

MS. BOHRER: Well, we can take that at the next step, you know. If everybody agrees there could be a fee, that this is a good idea, but you add a fee in, then we can, at the next discussion, say, okay, now what

should the fee be.

CHAIRMAN: That was very good. Okay.

MR. STALTER: And, really, Linda, what you're talking about is, like, an overhead fee or something like that?

MS. BOHRER: Yeah. Your cost that's going to cover your expenses and your overhead.

CHAIRMAN: All right. So, we've got a motion on the floor, and I apologize for not doing it quite -- (inaudible) -- but we're going to do it from here on out. All right. Second.

MR. MEIERHOFFER: So, it's the same motion with fees.

CHAIRMAN: With fees.

MR. MAHN: I second.

CHAIRMAN: Okay. Second. All in favor, raise your hand. One, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen. Sixteen. Those opposed? Three. Okay. Well, 16-3.

(Several people talking simultaneously.)

CHAIRMAN: Okay. Now --

MR. MEIERHOFFER: Now, do I think

that's really going to fly at the legislature? Probably not. But at least we get something together if --

CHAIRMAN: Okay. All right. Now, the next step is, like Mary said, let's figure out what the fee -- the cap on the fee would be.

MS. ERICKSON: There's two part of the fees issue, Chairman. One is whether we're going to do a percentage, a dollar -- whatever the cap is going to be. The other is, is it going to be taken up front, like directly from the consumer as a separate charge to the consumer as an administrative fee, or is it going to come out of the money that's going into trust, and those are separate issues, Chairman.

MR. OTTO: How that's worded with the current 436 is whether it comes out of the initial payments. The current 436 says that the 20 percent comes out of the initial payments, and so, that would be the phraseology you would have to change. Do you want -- probably the first thing to do is -- probably, we should vote on the percentage first, I think, is probably the easiest thing.

Let's figure out the percentage first, and then once we settle -- if we settle on a percentage, figure out whether that should come out of the initial fees or whether that should come out as the payments go.

CHAIRMAN: All right. Norma?

MS. COLLINS: I thought it was suggested by the AG's office that there be a separate fee structure, and I really liked what Sharon was describing: The 100-percent trusting and then having a separate fee structure. And I think that with consumers, they will understand that stuff nowadays. I mean, there's going to be some kind of administrative fee -- well, most consumers understand. I'm going to assume that most consumers understand that, but, yeah, having a separate fee structure.

MR. SLOCUM: Could you clarify what that would be? I don't think I know what that is.

CHAIRMAN: Linda had a --

MS. BOHRER: I just have a question. If you purchase -- if you're a preneed seller and you sell a $5,000 funeral or you sell a

$10,000 funeral, is your cost as a seller different? Do you have different overhead and administrative costs if you sell a $5,000 funeral versus a $10,000 funeral?

MS. STALTER: Can I break that up?

CHAIRMAN: Yeah, Bill.

MR. STALTER: You probably have two elements. I mean, there is a fixed cost. In other words, what went into the program, per se, and, generally, you've got a sales commission; how do you compensate the salespeople. And that's the, you know, the sticking point. And do you pay them a flat fee, you pay them a commission? Now, there are programs out there that do charge a flat fee, if you look hard enough, and it runs from about $400 up to $800; I mean, something like that nature.

CHAIRMAN: Okay. Josh, you had something you were going to -- statement?

MR. OTTO: I think we figured it out.

MR. SLOCUM: Yeah. I was just -- separate fee structure, I wasn't quite sure what that would have been.

MS. COLLINS: Yeah. It's just what

Sharon had described -- was that before lunch or after lunch?

MS. EULER: Yeah.

MS. COLLINS: I can't remember when it was, but you described that.

MS. BOHRER: We described that.

MS. COLLINS: Yeah.

CHAIRMAN: Sharon?

MS. EULER: Uh-oh. Basically, what I proposed is that from the consumer point of view, it's 100-percent trust. That the cost for the funeral would be 100-percent trusted, and then there would be an administrative fee allowed on top of that of X amount capped at X amount. And one of the questions I had is, there are costs of administration for the trust. 436 currently provides that the seller pays those costs of administrations for the trust. Do we want to continue to make those the seller's responsibility to pay out of that fee or do we want to allow the trustee's fees to come out of the trust and not be paid by the seller? And it seems to me that that calculates into this.

CHAIRMAN: I think Bill has got the

answer to the question.

MR. STALTER: I mean, there are different kinds of administration costs. I mean, the trustee's fees are a solely separate thing.

MS. EULER: Right.

MR. STALTER: But a lot of the accounting comes from the sellers. I mean, and, you know, that's the part you try to catch up front. But when you're talking about trustee's fees, you know, capping that off, I mean, you'll kill off the availability --

MS. EULER: No. No. No. No. I'm not talking about capping the trustee's fees. I'm talking about the question of do the trustee's fees come out of the trust or is the seller required to pay the trustee's fees as it currently is.

MR. STALTER: I'll tell you, as fiduciaries, we know we want to look to the seller, but we look to the trusts. Because once there's not enough income or so forth, I mean, basically, it is an independence issue, that, you know, we don't have to become dependent upon that seller to pay us, but

we're going to do the right thing, anyway.

MS. EULER: Right.

MR. WEAVER: I would echo Bill's comments on that as far as whether -- because there's a couple different things that come into play there, too. If the trustee is responsible for managing the investments, then, typically, they're going to get a little percentage off the investment return, but depending on what their responsibilities. If they're just, basically, the holder of the account, then, you know, their responsibility is not as much, obviously, as the investment. So, you have a kind of a going against it if you're saying the trustee is responsible for the seller, like he said, so I think it makes sense that it comes out of whatever the account balance is.

MR. MAHN: Do you want to make a motion on the percentage; is that what you want to do, Jim -- and where it comes from?

CHAIRMAN: Okay. Now, we're, like, two issues here. So, we're talking about the administrative fees of the trust would be taken out of the trust.

MS. EULER: Right.

MR. STALTER: Yeah. I think what we want to focus on is that up-front charge, as far as what's it cost to put that contract on the books.

CHAIRMAN: Okay. So, what we're talking about is the fee or the overhead --

MR. OTTO: The cost of selling the preneed contract as it is -- I think that's how it's phrased in 436 right now. That 20 percent, technically, as Kim points out, it's not a flat 20 percent on the current law. You can withhold up to 20 percent of the initial payments to cover the costs of selling the preneed contract. That's how the current law is worded.

CHAIRMAN: Todd? Okay. Mike?

MR. MEIERHOFFER: Well, just the understanding of the fact that this is a very important number that we're arriving at, and I don't want to arbitrary on it because, truthfully, if it's not enough, people aren't going to do it. It's just that simple. We will put together a nice law that isn't used, and I don't think that's what we want to do,

either. So, you've got to put something together that makes sense to the people that are putting this together, packaging it, and taking it to the consumer.

CHAIRMAN: Sharon?

MS. EULER: I would propose that whatever percentage the group comes up with, that the payment of the fee not come off the top like it currently does, but comes off of each payment as it comes in.

CHAIRMAN: Kind of like Iowa -- someone mentioned some state --

MR. MEIERHOFFER: Wait a minute. You can't run programs. It doesn't work. I mean, that does --

MS. EULER: Sorry. I feel like I need to duck. I'm just throwing it out there on the table.

MR. MEIERHOFFER: I know you are, and I think that's great.

MS. GRINSTON: Let's just ask Hawaii.

MR. McCULLOCH: Let's vote to have the State pay you at the end of the year if they have enough money.

MR MEIERHOFFER: That's exactly right,

John.

MR. McCULLOCH: We'll just do that. We'll pay you at the end of the year if we have enough money.

MS. EULER: I get paid every two weeks.

MR. MAHN: Oh, boy.

(Several people talking simultaneously.)

MR. OTTO: No. The best analogy is with a car salesman. You can't pay a car salesman 5 percent of every car payment that comes in.

MS. GRINSTON: Yeah. But can we go to how it comes out separate from what comes out, because what comes out is going to be important. Then we can ask -- we can probably talk about how it's going to come out.

MR. MEIERHOFFER: We want to restrict it, they want to give it to you later. I mean, that just doesn't work.

CHAIRMAN: Right. Josh?

MR. SLOCUM: Yeah. I think we're making progress here, but I'm a little bit concerned that we're -- you know, we're looking at this without seeing any real -- nobody has come here with numbers on paper

that shows what some typical, not inflated, not artificially downscaled from any perspective, what the real costs are. And I have suggested several times there are several more meetings here. I won't be here for them, so, you know, but why do we not at least take the time to poll a couple of the other states that are the tightest possible level and find out how they do it? I mean, how are we going to set a percentage fee here? It feels, to me, like we're just going to do something, possibly, that makes everybody feel like they did a good thing, and it may or may not be based on fact.

MS. GRINSTON: Are you talking about polling the states or polling the people in the industry to figure out what it is, because states may not have that information.

CHAIRMAN: Yeah. Here's a good example. Mike, he runs a big -- I mean, he has his own preneed. Bill Stalter, George, I mean, these guys can give you percentages today.

MR. SLOCUM: But what I'm saying is, you know, look, it's happening in some other

states. People here are saying it can't happen here. You haven't sold me yet. You'll sell me if you can find out how it is that the businesses in the other states are able to do it. I mean, maybe they are doing something that won't work here, but I don't think we've asked yet.

CHAIRMAN: All right. Mike?

MR. MEIERHOFFER: Josh, you said one thing I agree with today, and that is that we ought to go back and look at this. I don't think anybody has got an answer now. But I don't think we should go back to the states and find the states that are squeezing down so tight. I think we need to look at all of them. We need to look at the states and we need to look at other people in the industry and what this thing can work out. So, let's put this off till the next time we meet or whenever we have some chance to do some homework.

MS. GRINSTON: So, do you want us to go back staffwise? Would you like us to go back and maybe run it down within the states and maybe talk to the industry?

MR. MEIERHOFFER: Sure. You can do the states and some of us can do within the industry.

CHAIRMAN: Oh. Wait a minute. Mary?

MS. ERICKSON: I'm going to ask those in the industry what we have on the books is the 80-20, and I've heard some language that the 80 isn't enough trust funding. However, let me ask the industry: Is the 20 percent satisfactory for your admin fees, for your business overhead, et cetera? Has that been -- George?

MR. CLINE: Yes.

MS. ERICKSON: Mike?

MR. MEIERHOFFER: Yes.

MS. ERICKSON: And so, I'm not having us rush anywhere and we certainly can poll other states, but one thought to keep in mind is maybe we can come to a consensus that a cap may be some kind of 20-percent cap. We will realize, all right, to -- we'll get all kinds of numbers. We might not be able to crunch them and figure out what is right for Missouri. But as an industry, we're hearing 20 percent can work. So, that's just a

suggestion.

CHAIRMAN: John, you would agree 20 percent works?

MR. McCULLOCH: I do.

CHAIRMAN: Okay. Todd?

MR. MAHN: This percentage amount, I do agree, you know, rushing. I think it's something that, for the day, we could table and do some homework on it. It would be nice if someone would maybe step up to do the homework on that for us.

CHAIRMAN: Bill and George?

MS. BOHRER: I think they're hiding under the table.

MR. MAHN: And I'm not -- I don't know if this person would do it or not, but it seemed like, you know, Josh came to this meeting with a lot of information from other states, you know. Maybe he would entertain the idea of coming back to another meeting and bring us that information.

MR. STALTER: Todd, ask the question again, I mean, specifically about what percentage we're looking at.

MR. MAHN: What percentage we're

looking at as far as the fee, yes.

CHAIRMAN: Kim?

MS. GRINSTON: No. As we do that homework, I think we also, as we ask, and whoever is going to survey, that we also take into consideration the uniqueness of the market. New York, wonderful state. I'm from New York, but a soda in New York is going to cost you nine bucks. Let's make sure that we are, you know, making --

MR. SLOCUM: Oh, you're from New York City. Now, I'm from Upstate New York where we live out in the country now.

MS. GRINSTON: I'm from New York City where even the mice charge you for whatever you're going to do. But, no. I just think we need to take into consideration. The other thing is I think we need to take an indicator at competition because a free market, this is what our country is founded on. A free market is beneficial market to the consumer. If we've got numbers and they're only one -- and there's only one person there, there's a problem. If there are numbers and you've got a healthy, active market, if someone says, you

know, we're at 70-30, and we've got one seller, that's -- you know, make sure that we understand that not only are we looking at numbers, we're not only looking at percentages, we're also looking at promoting healthy competition in the state of Missouri.

CHAIRMAN: Good point. Could I just form a committee? Can I get, like, Mike and John, Bill, George. I mean, you can do this independently and then, that way, if you come back and then your numbers are 20 percent and yours is 12 and somebody is 15, that kind of gives us an idea. Does that make sense? And, Don, you could formulate some, and then, Josh, you could do the nationwide --

MR. SLOCUM: I can get some data. I may not be able to be here, but I could certainly offer it to anybody, and what I found to anybody who wants it.

CHAIRMAN: I mean, not get all the states, but get the bulk -- like a majority of states, what they would do or they do in that situation.

MR. SLOCUM: Well, I think Kimberly was right, actually, in terms of we see what

the state laws are, but it's asking the business owners in those states who operate under those laws how they finance this, because they do somehow, we just don't know how they do it.

CHAIRMAN: Everybody satisfied with that? So, anybody else like to volunteer to be on the committee? You guys didn't volunteer, but you got picked. All right. Let's take a short break.

(Off the record)

MS. GRINSTON: One of the issues that came up last session was the trustee's duties and responsibilities. In connection with that issue, there was a suggestion made, and I can tell you it wasn't a suggestion from the department. We have talked with our Division of Finance, as well, that we restrict the use of independent investment advisors by a trustee. Right now, the law reads that a trustee can transfer investment functions to an independent investment advisor. And there was some very real concern for a lot of reasons on the use of IIAs, or however you want to call them, and whether that should be

an allowable thing for trustees. And so, I'd like to open the discussion on independent investment advisors and whether that portion of 436 needs to be amended, deleted, which is the recommendation of the department, and I think it was also in the Board's recommendations last year on Representative Meadows' bill, as well.

CHAIRMAN: Bill?

MR. STALTER: I'll start and then, Rich, they'll step in on the law, won't you?

MR. WEAVER: Probably.

MR. STALTER: Okay. The Missouri law is very unique in that it exculpates the trustee fiduciary when there is an independent investment advisor. I mean, that's something that's always bothered me. The banks, frankly, want the ability to use an outside investment advisor generally to Reg 9. They have a duty to supervise those investments to see that they are compliant with the Prudent Investor Act. So, I think, basically, what I see wrong with this is, it is that provision about, yes, you can appoint them, but then, if you do, the trustee is, basically, off the

hook, so I think that should be deleted, but allow the fiduciaries to continue to use independent investment advisors, because I think everybody in this room who has had a trust has had, you know, problems with investment performance. Part of that is they need the flexibility to have somebody who understands the industry manage their funds.

CHAIRMAN: Sharon?

MS. EULER: I think that the assets of the trust should be completely under the control of the trustee. And if the trustee needs to hire an outside investment advisor, at their discretion, they can do that, but that the seller should not be the one who hires the independent investment advisor.

MR. STALTER: Okay. I'll counter that, though. It is, basically, the banks really do not understand this industry, but if you're going to find somebody who does, the -- I want to say the seller or the funeral home should have, really, some -- you know, an opportunity to appoint. Now, generally, the fiduciary can decide that that's not a prudent appointment because they're going to be liable if it's not

a good investment advisor or somebody that's prudent.

CHAIRMAN: Sharon. Go ahead. You all duke it out.

MS. EULER: I'm not going to debate what the current law provides because reasonable minds can disagree about that. But it seems, to me, that the law needs to make clear that the bank trustee is in charge of these trusts. And, you know, they can use an investment advisor, but I don't think the seller should be allowed to appoint the investment advisor because the question of independence is always there, whereas if the trustee is selecting the investment advisor, then there's less likely to be an independence problem.

MR. OTTO: Actually, I completely, 100 percent, disagree with that -- as much as you can. Right now, if I'm a seller, I hire a bank to be my trustee, and I hire an independent investment advisor; okay? Now, I've got two separate entities watching the pot. They're looking over each other. I've got the bank if the -- you know, if the bank

doesn't like what the investment advisor is doing, they'll tell me. If the investment advisor doesn't like what the bank is doing, I guarantee you, they'll tell me. If the bank hires the investment advisor, then I've only got one fox looking at the chicken coop instead of two.

MS. GRINSTON: May I ask a question? Are investment advisors licensed anywhere?

MS. EULER: Yes.

MR. OTTO: Yes.

MR. MEIERHOFFER: Yeah, they are.

MR. McCULLOCH: Yes.

MR. OTTO: The problem with the current situation that has caused this thing is that so-called investment advisor in the -- wasn't, I don't think, independent. That's one of the problems. But I like --

MS. EULER: But the reason why that was -- even though -- even after that was known, nobody could do anything about it because the seller's discretion who to hire and whether to hire. Whereas if the bank trustee was responsible for it and they saw there were bad things going on, the bank could

have done something about it. I think it needs to be very clear that these trusts are treated like any other trusts and that the trustee's duties and obligations are the same for these trusts as they are for any other trust.

MR. OTTO: Well, I'm not saying we shouldn't -- the bank -- that there shouldn't be the fiduciary relationship, you know. We do have that weird thing in the law as to completely arguably exculpating the trustee. But I -- speaking on behalf of the Missouri Funeral Trust, we like being able to hire an investment advisor and having our trustee, and that gives us two people looking at the money. And it gives us -- you know, again, it gives us two sets of eyes looking at it instead of one.

MS. EULER: And I'm not saying that you can't have that, I'm just saying that it needs to be clear that the bank trustee is ultimately responsible for this money.

CHAIRMAN: Linda?

MS. BOHRER: Rich, how do trusts not involved with preneed, just trusts in general,

work relative to investment -- independent investment people?

MR. WEAVER: Well, in the majority of them we have -- there are 297 state-chartered banks in Missouri, and then there are, I think, 35 or 40 national-chartered banks. Out of that 297, roughly, 50 of them either have full trust powers or they have some limited trust powers. And in the majority of those cases, the one -- they typically manage the investments for the trust because --

MS. BOHRER: Isn't that the point of a trust?

MR. WEAVER: Well, I mean, yes and no. I mean, kind of the trust -- I mean, if you're looking at the trustee, their client is the trust, so they have a fiduciary responsibility to protect those assets in the trust. And then, also, they do it for the investment-management part of it because they obviously -- they're going to hire staff and put on board for managing investments, and they look at that as another source of money. So, depending on, you know, what type of trust it is and, like, in the preneed trust, these

accounts can be very labor intensive and they can also carry risk with them. So, you know, when the trustee is going to look at whether or not -- if they do their job to take on this account, they're going to look at, first of all, is it going to be profitable for us, how much time are we going to be involved, and what kind of liability are we going to take to manage this. So, I guess, as Kim mentioned, our recommendation was to do away with the investment advisor solely on the standpoint if you're wanting to really tighten up control and keep that with one entity, we'd say put that on the trustee because going -- years ago, there was -- I shouldn't say a similar problem. In our office, in talking with our trust guys, when we've seen problems in the preneed trust, it's been when you had the independent investment advisor, because, like you said, the way the law reads now, you, basically -- the trustee is off the hook, so to speak, if the independent investment advisor is managing the investments. And so, the one thing, if you take out the investment advisor, you eliminate this finger pointing

and say who is responsible for the monies, who is going to invest them. And then, obviously, each trust itself is going to be a little different depending on, you know, the size of the account and, you know, whether as far as managing liquidity and things like that. And so, I'd probably go another step further, and this is a different item of discussion, but, to me, it would make sense then, if you're going to change the law, have the trust agreement be filed with the Board. That's another recommendation that we had was that -- then, that way, the Board kind of knows what's going on with that trust agreement, because that trust is only as good as that agreement and what's spelled out there and what are the conditions, what are parameters, et cetera. So, I'll toss that in, as well.

MR. STALTER: I agree with that. I mean, from my perspective, when I go in and audit trusts, I mean, the trust instruments are usually purposefully very vague. But it's the OCC, when they'll come in and audit, they're looking first for that trust instrument and looking where the -- like I

say, responsibilities are delegated. And we really want to make sure that for these trustees, that they understand what responsibility they have for asset management. And in the case of this -- the 436, is it basically -- you know, when an OCC auditor comes in and compares the trust instrument to the statute, they're off the hook. But, you know, the banks still want the opportunity to use investment advisors. There are good investment advisors out there. And this is a very unique industry, the death-care industry, in terms of what its needs are for the liquidity or long term and so forth, because for my clients, in the larger institutions, you'll have institutional trusts and then you have what we call wealth management or estate-planning trusts. And all of these always fall around the estate-planning trusts and, generally, they're smaller kinds of trusts. But really to have these accounts be productive, they've got to accrue them together and, basically -- I mean, it just -- it's a different type of a creature, and a lot of the institutions do not have that expertise

in investment so that they look outside. And we'll use SCI or Stuart or any of those; we'll use an outside investment advisor who understands the industry.

CHAIRMAN: That would be great. Rich?

MR. WEAVER: That was one thing I was going to add. I would be happy to contact the banking associations, if you wanted some input from them on how to go. And like I said, this is coming from the Division of Finance standpoint, the ultimate protection of hold one entity accountable, but I would be happy to contact -- we have, you know, relationships, obviously, with the banking associations, with the NBA, MIBA, if you would want their input from the industry on what their preference is on that.

CHAIRMAN: Mike?

MR. MEIERHOFFER: I've served on trust committees. I've been involved in foundations that invested hundreds of millions of dollars, and I will tell you these people can be vitally important because of just what you're saying, Bill. The fact of it, industry specific, I've got a brother that his company

does nothing but measure one investment advisor to another and how they perform. You know, this is probably a little bit -- but the fact of it is, a tenth of a basis point for a lot of money over a period of time can be a lot of money in interest. So, don't limit -- again, you want us to take care of the consumer, but you're telling us don't hire somebody that's really got expertise. The point is, there are people out there and you have to basically check out their credentials, work with the bank, and it can work.

CHAIRMAN: Mr. Baker?

MR. BAKER: I think Mike and Bill answered my question. Depending upon the size of the trust, you know, you're going to get huge fees for the smaller trust, and they're going to say, well, let's just take it over here, park it and forget it, and you do not have the opportunity then to really grow those funds because they're going to put it in some type of an instrument that they don't have to fool with very much. But if I have an independent advisor, then he is going to be able to take a look at what is a good

conservative investment that has the opportunity to grow.

CHAIRMAN: Sharon?

MS. EULER: I don't think anybody is saying here that there can't be investment advisors. I think the distinction here that the department has recommended and I concur with is that the bank trustee is -- has to be responsible for this money. And if the bank wants to ask -- retain an investment advisor to help with the management of the trustee, then the bank can do that. And one would think that the seller would want to coordinate with the bank and talk with the bank, but, ultimately, the bank is the responsible party for the money.

MR. MEIERHOFFER: You know, Sharon, I don't disagree with that, and I will say, again, if you have an investment advisor and a trustee and they don't get along, you're not going to -- it's not going to prove anything anyhow. So, those people are going to work together or else me as --

MS. EULER: Not always.

MR. MEIERHOFFER: Well, then I

wouldn't have them. Then somebody gets fired.

MS. EULER: Well, and again, you see -- and this is my perspective as a regulator in that I don't see you and your company. I see the people who have had troubles and when things have gone south, and, unfortunately, feel like we need to legislate some things to protect people from themselves because things go south and then everybody is looking to my office or looking to the Board, they're looking to the department, why don't you do something. And if we can clarify that the trustee is responsible for the money, then we --

MR. MEIERHOFFER: Sure. I don't have a problem if they can work that out within the banking -- if that'll work. I mean --

MS. EULER: Yeah. Then we've got some teeth and we can --

MR. MEIERHOFFER: That's above my pay grade. I don't understand that.

CHAIRMAN: Public comment?

MR. PERKINS: I would just stand up for investment advisors, having regulated them, that, I mean, state ones and federal ones are

under a lot of scrutiny. They get audited; no offense to my finance brethren or anything. But, I mean, registered investment advisors play a real important role. And as an insurance company, I mean, we use registered investment advisors to advise us regarding our investments. Again, I don't have any problem with saying, okay, who is going to be ultimately responsible for it. I mean, I think Bill made a great point just saying that, you know, the statute probably needs to be changed to make sure that it's always the duty of the trustee. But I would certainly hate for you to limit the ability of either the seller or the bank to use a registered investment advisor, so -- and I'd be happy to answer any questions about registered investment advisors if anybody wanted to know, so, thank you.

CHAIRMAN: Does anybody have any questions of him? So, do you want to vote this out, or do you want to wait till Rich comes back with some of the banking --

MR. OTTO: I would like to see what the bank folks say.

MR. STALTER: I think since I got an assignment, Rich should have an assignment.

MR. WEAVER: I have no problem doing that. I have a very easy assignment, so I --

CHAIRMAN: We're going to let him talk to the banking people and then we'll discuss it and vote next week; okay? I think Kim has got some closing arguments.

MS. GRINSTON: Just on the draft that you're going to see today -- it's 4:00 and Jim wanted us to wrap up. I think we have marching orders. I have some more drafting to do. What you're going to see today, you are going to see mismatched places and everything else. Please, just look at the consensus ideas that you know were in there. One of the things, the trust-funded, insurance-funded, joint-funded language is going to have to change depending on what you all decide down the road. But, again, let's just look at the structure of it. Please pay attention to that. See if some of that language is workable. There are disciplinary provisions in there. I'd really like you to take a look at that and really critique that

very heavily. This draft, again, is to be very heavily edited. We are going to need comments. Let us know if there is a problem because that's the only way we'll make sure we're getting language that really represents what this group decided on.

MR. STALTER: And the target date for that is the 12th? I mean, what's -- I mean, really, there won't be enough time to respond to anything by Tuesday, so --

MS. GRINSTON: Yes. Well, we're going to be editing language all the way through until the last -- very last meeting. So, don't feel a rush for Tuesday, but if you see comments before Tuesday -- and, Josh, I'll make sure you get an electronic copy. If you see changes or anything before Tuesday that you would like us to incorporate before we come back to the group on Tuesday, let us know so we can make sure that we get that ready and present it to everybody else. Also, there is some language from the Department of Insurance that they are suggesting. My plan is to merge that into this draft, so please read those. There are two separate documents

right now, but read those with the idea that I think the suggestion would be to merge those if the consensus group, you know, finds those likeable, if you will.

MS. BOHRER: What time would you want those comments by on Monday in order to be able to incorporate them into a product.

MS. GRINSTON: Seven a.m. No, I'm joking.

MS. BOHRER: By noon?

MS. GRINSTON: No. We're probably going to be working on Monday. If you guys could do 4:00, you know, just at least give us 4:00 on Monday. Let's do 3:00. Let's do 3:00, just to give us a little bit of wiggle room at the end because we're going to be meeting all day Monday, too, and so, we can --

MS. ERICKSON: Kim, give yourself a break. Say noon. Make it a cutoff that you're not working on this till 1:00 in the morning.

MS. GRINSTON: Okay. Let's do that. I like that suggestion.

MS. BOHRER: I just thought she wanted to work till 1:00 in the morning.

CHAIRMAN: Folks, on the committee that's looking into the expense of a trust and selling and all that, is there anybody in here that sells, like, that's 150 calls or less that has a trust? Because, you know, it was pointed out to me that, you know, we can take these people that have a lot of, you know, money in trusts and sell a lot of preneed and all that kind of thing. I don't think there's any -- you know, I don't think there's anybody with 150-call funeral home in this room, is there, that sells their own trust or has their own trust and sells their own preneed? Do you?

MR. MAHN: I know someone who does, that's that size, if you want me to ask them -- do a little research on it.

CHAIRMAN: You might ask him to get -- yeah. But if you can get those figures by next Tuesday of those expenses, I would appreciate it, and then we'll just throw them all together. And then that -- if you can work independently, that's fine, because then everybody comes up with a different figure and we'll kind of go from there.

MR. MEIERHOFFER: Well, I was going to

try to get -- so we could at least talk and have a chance.

CHAIRMAN: Yeah. You all visit --

MR. MEIERHOFFER: So, if those people would just stay for a second, we'll get together and how we can communicate.

CHAIRMAN: Okay. All right. So, if you all gather after the meeting and kind of, you know, exchange telephone numbers, that would be great. I'd like to thank everybody for attending. You're great. It worked smooth. It's amazing. Thanks a lot. Have a safe trip home.

(Off the record)

I, Kristy B. Bradshaw, a Certified Court Reporter, in the State of Missouri, do hereby certify that the foregoing transcript constitutes a full, true and correct record of said proceedings that were held on July 24, 2008; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 11th day of August, 2008.

Kristy B. Bradshaw

KRISTY B. BRADSHAW, CCR

Funeral Consumer Alliance - FCA
Presentation Missouri Preneed 2008

Schnieders, Pam

From: Joshua Slocum [josh@funerals.org]
Sent: Tuesday, July 22, 2008 5:55 PM
To: Meadows, Tim; smnicely@sunflower.com; Collins, Norma J.; wastal@swbell.net; PR.Embalm
Subject: Funeral Consumers Alliance Preneed Reforms for Missouri

Attachments: FCA Presentation MO Preneed 2008.pdf

FCA Presentation MO Preneed 20...

To all parties meeting July 24, 2008 to discuss reforming MO Chapter 436:

Please find attached Funeral Consumers Alliance's suggested reforms, and supplemental materials. It's a .pdf document with four (4) pages total.
Feel free to circulate it publicly or to anyone you think might be interested. I'll be bringing 25 paper copies for the attendees when we meet in Jeff City on Thursday.

I look forward to working with you, and thank you all for taking time to discuss these issues with me recently.

Joshua Slocum
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A federation of nonprofit funeral information societies dedicated to protecting a consumer's right to choose meaningful, dignified, and affordable funerals

Proposed Amendments to Missouri Statutes, Chapter 436, Regarding Prepaid Funerals and Burials

Submitted by Funeral Consumers Alliance, Inc., and Funeral Consumers Alliance of Greater Kansas City
July 24, 2008

To the members of the preneed review committee:

It's clear from the financial crises affecting prepaid funeral trust funds that Missouri laws need to change. Both funeral consumers and funeral homes are at great financial risk, largely because of Missouri's inadequate laws that permit and encourage financial chicanery.

Funeral Consumers Alliance is not alone in believing that the only acceptable standard is 100 percent deposit of consumers' prepaid money, interest accrual, and complete portability/refundability without penalty. The **National Funeral Directors' Association** - the largest funeral home association of its kind - recognizes nothing less is acceptable. Writing in the March, 2008 issue of NFDA's *The Director,* NFDA Board member Robert T. Rosson, Jr., wrote:

> One fundamental principle in preneed operations is the recognition that preneed funds are not under *any* circumstances *our* money. We simply cannot fund any of our business opportunities with preneed money. It is the consumers' money, and it remains theirs until we fulfill our obligation of service. In all cases, 100 percent of preneed funds should be deposited into legal trusts, and no principal or interest should be withdrawn until after the contracted funeral services have been performed.

We offer the following minimum suggestions for improving state laws, and we'd be happy to make available detailed suggestions for rewriting the statutes if requested.

- Require 100 percent deposit of a customer's prepaid funeral money in a regulated financial institution.
- Require funeral providers to refund 100 percent, with interest, if the consumer wishes to cancel the contract before death.
- Require funeral providers to transfer the consumer's investment - principal and interest - to a new provider of the consumer's choice on request.
- Cap any administrative fees, or fees of any sort, at ¾ of 1 percent, as New York state does. Missouri's current law allows providers to skim an unconscionable 20 percent from the customer's account, in addition to **all the interest annually.** This is not only grossly unfair to the consumer, it encourages providers to indulge in short term greed that puts the financial security of the business and the consumer at great future risk.
- Prohibit funeral providers from converting a customer's trust-funded funeral to an insurance policy under any circumstances.
- Require funeral providers to send customers an annual 1-page statement showing how much money is in the customer's trust account and how much interest has accrued.
- Require funeral providers to submit to the state annually a copy of each preneed contract sold.
- Require the state to audit a reasonable sample of funeral providers annually to determine compliance with trusting laws.
- Lift unjustifiable restrictions on public access to information on government regulation and licensing of prepaid funeral sellers. Both current and proposed laws almost totally deny the public access to complaint records, the legal standing of preneed sellers, and other information vital to consumers and public interest groups.

Missouri Preneed Law: A Financial House of Cards

This example shows why Missouri's laws allowing funeral homes to skim 20 percent from a consumer's prepayment, plus all the interest annually, is bad for business and consumers.

Mrs. Smith decides to prepay Johnson Funeral Home $6,000 (today's retail price) toward her eventual funeral. Johnson funeral home deducts its 20-percent commission, leaving $4,800 to be placed in trust. Assume Mrs. Smith's trust fund earns 4 percent interest every year (a generous assumption by today's standards), and that Johnson Funeral Home deducts the interest every year as allowed by law. Also assume Johnson Funeral Home's prices increase by an average of 4.72 percent each year (calculated from Bureau of Labor Statistics reports from 2000 - 2007). Assume Mrs. Smith lives for 7 seven years, the average length of a preneed contract.

Year	Amount in Trust	Interest Skimmed	Johnson's Prices
2008	$4,800	0	$6,000
2009	$4,800	$192	$6,283
2010	$4,800	$192	$6,580
2011	$4,800	$192	$6,891
2012	$4,800	$192	$7,216
2013	$4,800	$192	$7,557
2014	$4,800	$192	$7,914

TOTAL Interest skimmed over seven years: **$1,152**
TOTAL in trust at Mrs. Smith's death: **$4,800**
RETAIL price at Johnson Funeral Home at Mrs. Smith's death: **$7,914**

DEFICIT: $3,114

Even *if all the interest had accrued* over the life of the contract, there would still have been a $1,992 shortfall — Missouri's 20 percent initial commission makes it impossible for the trust account to ever fully fund the eventual funeral. The problems Missouri is facing with the NPS meltdown are no surprise — what's shocking is that it's taken this long for the inevitable to occur.

No business can take tomorrow's profit today and expect to service its obligations in the future. As more preneed contracts come due, more funeral homes are either going to be giving away funerals at cost or less, and the unscrupulous providers will resort to illegal tactics to make up for their poor business choices.

- Survivors will likely be pressured to buy more goods and services to make up for the shortfall - so much for "taking care of everything" in advance.
- We'll hear more reports of from families that cheaper caskets will be substituted than what were paid for.
- Financially desperate and unscrupulous funeral homes will consider refusing to abide by the contracts altogether and demanding out of pocket payment from survivors.

These are the obvious and inevitable consequences of the shortsighted business practices Missouri law permits. This must change now, unless the state wants to spend its time and taxpayer dollars in perpetuity cleaning up the fallout from defrauded families and bankrupt funeral homes. Most importantly — claims that "we won't be able to stay in business if we can't take a cut up-front" are **red herrings**. The chart on the following page shows that's not true -**29 states require 100 percent trusting, and their funeral homes aren't going out of business.** Missouri funeral homes don't have "special circumstances." They're merely used to doing business in an irresponsible way because of the state's permissive laws — the **sixth worst preneed laws in the country**.

Where Does Missouri Rate Among State Trusting Laws? 6th From the BOTTOM

State	Required Deposit	Who gets the interest?
Alaska	100%	accrues
Arkansas	100%	seller
California	100%	accrues
Connecticut	100%	accrues
Delaware	100%	accrues
Georgia	100%	accrues
Kansas	100%	accrues
Kentucky	100%	accrues
Louisiana	100%	accrues
Maine	100%	accrues
Maryland	100%	accrues
Massachusetts	100%	seller if fixed price funeral
Michigan	100%	accrues
Minnesota	100%	accrues
Montana	100%	accrues
New Hampshire	100%	accrues
New Jersey	100%	accrues
New York	100%	accrues
Pennsylvania	100%	accrues
Rhode Island	100%	accrues
South Carolina	100%	accrues
Tennessee	100%	accrues
Utah	100%	accrues
Vermont	100%	accrues
Wisconsin	100%	accrues
Wyoming	100%	seller
Indiana	100%	accrues
North Dakota	100%	accrues
Ohio	100%	accrues
Illinois	95%	accrues
North Carolina	90%	accrues
Oklahoma	90%	accrues
Texas	90%	seller
Washington	90%	accrues
West Virginia	90%	accrues
Virginia	90% if guaranteed 100% if not	accrues
Oregon	90% if guaranteed 100% if not*	accrues
New Mexico	Insurance only	
DC	No laws	
Arizona	85%	seller if fixed price funeral
Idaho	85%	accrues
Mississippi	85%	accrues

South Dakota	85% if guaranteed, 100% if not	accrues
Nebraska	85%	seller, if more than inflation
Iowa	80%	seller half
Missouri	**80%**	**seller**
Colorado	75%	seller
Nevada	75%	seller, 75% of income
Alabama	75% svcs.	accrues
Hawaii	70%	seller
Florida	70% svcs	seller

END