

# Funeral Consumer Alliance - FCA Presentation Missouri Preneed 2008



Funeral  
**Consumers**  
ALLIANCE

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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*

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## **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all cases, 100 percent of preneed funds should be deposited into legal trusts, and no principal or interest should be withdrawn until after the contracted funeral services have been performed.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  $\frac{3}{4}$  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? 6<sup>th</sup> From the BOTTOM**

| <b>State</b>   | <b>Required Deposit</b>           | <b>Who gets the interest?</b> |
|----------------|-----------------------------------|-------------------------------|
| 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<br>100% if not  | accrues                       |
| Oregon         | 90% if guaranteed<br>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,<br>100% if not | accrues                           |
| Nebraska        | 85%                               | seller, if more than<br>inflation |
| Iowa            | 80%                               | seller half                       |
| <b>Missouri</b> | <b>80%</b>                        | <b>seller</b>                     |
| Colorado        | 75%                               | seller                            |
| Nevada          | 75%                               | seller, 75% of income             |
| Alabama         | 75% svcs.                         | accrues                           |
| Hawaii          | 70%                               | seller                            |
| Florida         | 70% svcs                          | seller                            |

**END**

# MFDEA Preneed Concept

## MFDEA PRENEED CONCEPT

The consumer is given an option at start of process. Does the consumer wish to be able to change funeral homes at will with no penalty? Does the consumer wish to be able to cancel at any time with no penalty? Does the consumer want an arrangement where it is truly *their* money being put away *for them* and all of the principle and income belongs to them?

If so then the consumer can chose Option "A"

### OPTION A

An account would be set up at a bank in the consumer's name Payable On Death to the Funeral Home. The consumer would be able to change the POD at any time. The consumer would be able to withdraw the funds at any time and would receive all of the funds plus all of the income. The consumer would also be responsible for paying any taxes on the income. A provision would have to be included (as it is now for joint accounts) that allows the fund to be made irrevocable. Upon death the funds would be paid to the funeral home

**HOWEVER THERE WOULD BE NO "GURANTEED" CONTRACT UNDER THIS OPTION.** The consumer may wish to pick out the funeral they would wish to have and fill out a goods and services statement, but just as with current non-guaranteed trusts or joint accounts, at-need prices would be charged at the time of death. If the funeral home works with and helps set up such an account for the consumer, it should be allowed to charge a small fee for this service that would be capped via rulemaking by the State Board.

If the consumer wishes to have a guaranteed contract where the prices are locked-in, does not want to have to pay taxes on the income or otherwise does not wish to own or control the funds, then Option "B" would be available.

### OPTION B

This would be a Trust similar to what is currently in Chapter 436. The Seller would have the right to retain 20% (or perhaps 10% 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, the consumer would get back 80 or 90% and would not be entitled to the interest/income. However, in this case, the contract could be "guaranteed" with locked-in prices.

**The key is that it is made very clear to the consumer that, with Option B, what the consumer is doing is BUYING AND PREPAYING FOR A FUNERAL AT THIS FUNERAL HOME** and that the money is *not* being placed into trust for the consumer but being invested to cover the seller's and provider's expenses and the risk of the guarantee. Very clear disclosures drafted by the State Board would make it clear to the consumer what the arrangement consists of and what happens if there is a cancellation or change in funeral home. The consumer would have to sign the disclosure statement.

It would not seem necessary with this arrangement that the current "Joint Account" provisions of 436 be retained, but that may be an item for discussion.

Department of Insurance, Financial  
Institutions and Professional  
Registration - Preneed Trust Legislation

## Preneed Trust Legislation

1. “Random” or comprehensive audits are often ineffective. Just expanding the frequency of examinations without better standards will not prevent the problems. The law should allow random examinations and require “cause” for audits with “cause” based upon reasonable suspicion of either a violation of 436 or imprudent or unsound investment of trust assets. It should not require a complaint and may be based upon activity in the Trust that appears to be detrimental to the preneed contract holders or contrary to their interests.
2. Require Trustee to file annual report with a listing of assets (a Trust balance sheet.) If the preneed contract deposits (currently 80% of preneed contract sale receipts – which should be raised to 85- 90%) exceed \$3,000,000, the Trustee should be required to file a certified annual report.
3. Require Trustee (or trust officer) to attest to “market value” in the annual report.
4. Define “market value” – a valuation principle that includes transferability of ownership – “market” means you can sell it.
5. Require Trustee to attest that it controls the assets in annual report – It is not problematic for the Trustee to engage the services of an investment advisor, **but** Trustee must maintain control of assets and the statute should not contain language that might be interpreted to absolve the Trustee of his fiduciary duties or responsibility to attest to market value of trust assets. **This will require deleting the last sentence in §436.031.2 -- “The trustee shall be relieved of all liability regarding investment decisions made by such qualified investment advisor.”**

### **Amended Section § 436.005 Definitions**

- (4) “Market value”, a fair market value,
  - (a) As to cash and credit, the amounts thereof;
  - (b) As to a security as of any date, the price for the security in that date obtained from a generally recognized source or the most recent quotation from a source, or to the extent no generally recognized source exists, the price to sell an asset in an orderly transaction between unrelated market participants at the measurement date; and
  - (c) As to any other asset, the price to sell an asset in an orderly transaction between unrelated market participants at the measurement date consistent with Statements of Financial Accounting Standards.

**Amended Section  
§ 436.027**

**Designate the current language as 1. and add a second paragraph:**

1. The seller may retain as his own money, for the purpose of covering his selling expenses, servicing costs, and general overhead, the initial funds so collected or paid until he has received for his use and benefit an amount not to exceed fifteen percent of the total amount agreed to be paid by the purchaser of such prepaid funeral benefits as such total amount is reflected in the contract.

2. All amounts paid by purchasers to the seller under the terms of a preneed contract, with the exception of those funds permitted to be retained as set forth in subsection 1, shall, within thirty days after collection, be:

(1) deposited in a trust account maintained at a financial institution designated by the seller in section 436.021.2(e) and as subject to the provisions of sections 436.031 and 436.032;

(2) deposited in an account in the joint names of the provider and purchaser pursuant to section 436.053; or

(3) used to purchase from an insurance company with no affiliation to the seller a whole life insurance contract for the face amount of the preneed contract, which names the purchaser as the owner of the insurance contract, and with a cash surrender value of no less than eighty-five percent of the amounts paid by the purchaser.

3. It is unlawful for the seller to use, dispose or transfer the amounts paid by purchasers for any purpose other than as authorized in this section.

**New Section  
§ 436.032**

1. Every trustee of a preneed trust that has accepted deposits made to it by the seller of preneed contracts shall before March 31<sup>st</sup> of each calendar year file with the board the following:

(1) A signed and notarized statement by the trustee, or its officer, attesting to the market value of assets in the preneed trust as of December 31<sup>st</sup> of the preceding calendar year;

(2) A statement of income and changes in financial position of the preneed trust for the preceding calendar year; and

(3) A signed and notarized statement by the trustee, or its officer, attesting that the trustee during the preceding calendar year has:

(a) administered the trust solely in the interests of the purchasers and beneficiaries;

(b) taken all reasonable steps to control all assets derived from deposits made to it by the seller;

(c) prudently invested and protected all property in the preneed trust in compliance with the duties and obligations of a trustee and

in furtherance of the purposes of sections 436.005 to 436.072, RSMo;

(d) distributed interest, dividends and capital gains, net of losses, from the preneed trust only when prudent under the limitations of section 436.031.3, RSMo; and

(e) not, in connection with the investment of property in the trust, received any advice or been influenced, directly or indirectly, by the seller, any agent of the seller, or any other person with whom the seller has a prior business relationship or has paid or promised to pay any money or other benefit for any purpose.

2. Every trustee that has accepted more than three million dollars in deposits from the seller shall file a certified balance sheet of the trust as of December 31<sup>st</sup> of the preceding calendar year.

3. Whenever it shall appear to the director of finance that any trustee under this chapter has engaged in any violation of this section, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the trustee has participated in any violation of this section, the director of finance may initiate an action and issue orders to cease and desist and all other relief pursuant to the provisions of sections 361.260 through 361.290, RSMo.

4. It is unlawful for any seller to continue to sell preneed contracts in this state, if a financial institution designated as trustee by the seller under section 436.021.2(e) has failed to file the annual statements with the board as required by this section.

**New Section  
§ 436.057**

1. The board may conduct an examination of any seller or any preneed trust in this state as often as the board in its discretion deems appropriate.

2. Whenever it shall appear to the board that a seller or trustee has failed to comply with any provision of sections 436.027, 436.031 or 436.032, or the market value of assets in trust is less than equal to ninety percent of the total amounts paid by the purchasers of the preneed contracts, the board in its discretion may order an audit of the preneed trust, and such decision by the board does not require a complaint and may be based upon detected activity in a preneed trust that appears to be detrimental to the purchasers or beneficiaries or contrary to their interests.

3. When making an examination or audit under this section, the board may appoint and retain appraisers, independent certified public accountants or other professionals and specialists as examiners, the cost of which shall be borne directly by the seller.

4. The examiner appointed by the board may during normal business hours examine, audit and inspect any and all books and records maintained by a seller or any preneed trust transacting business in this state.

5. It is unlawful during an examination ordered by the board for any person to deny an examiner appointed by the board reasonable access to any and all books and records maintained by the seller or any preneed trust transacting business in this state.

State Board/Kim Grinston's 436 Review  
Committee Draft Legislation

(Please provide comments via email by  
Monday, July 28, by noon to  
[Connie.Clarkston@pr.mo.gov](mailto:Connie.Clarkston@pr.mo.gov).

Fax number is 573/751-0878

# PROPOSED DRAFT

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333.700. The provisions of sections 333.700 to 333.900 shall be referenced as the "Missouri Preneed Funeral Contract Act."

333.705. As used in sections 333.700 to 333.900, unless the context otherwise requires, the following terms shall mean:

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

(2) "Board," the Missouri State Board of Embalmers and Funeral Directors;

(3) "Division", the division of professional registration of the department of insurance, financial institutions and professional registration;

(4) "Funeral merchandise", caskets, grave vaults, or receptacles, and other personal property incidental to a funeral or burial service, and such term shall also include grave lots, grave space, grave markers, monuments, tombstones, crypts, niches or mausoleums;

(5) "Insurance-Funded" Preneed Contract- A preneed contract which is designated to be funded by payments or proceeds from an insurance policy;

(6) "Joint-Account Funded" Preneed Contract- A preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account;

(7) "Person", any individual, partnership, corporation, cooperative, association, or other entity;

(8) "Preneed contract", any contract or other arrangement which provides for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral

1 merchandise, where such disposition, services, facilities or merchandise are not immediately  
2 required, including, but not limited to, an agreement providing for a membership fee or any other  
3 fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount;

4 (9) "Preneed Counselor," any person authorized to sell a preneed contract on behalf of a  
5 preneed seller;

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

9 (11) "Provider", the person designated to provide the disposition or funeral services,  
10 facilities, or merchandise described in a preneed contract;

11 (12) "Purchaser", the person who is obligated to pay under a preneed contract;

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

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

15 (15) "Trust-Funded" Preneed Contract- A preneed contract which provides that payments  
16 for the preneed contract shall be deposited and maintained in trust.

17 **APPLICABILITY**

18 333.710.1 The provisions of sections 333.700 to 333.900 shall not apply to:

19 (1) Any contract or other arrangement sold by a cemetery operator for which payments  
20 received by or on behalf of the purchaser are required to be placed in an endowed care fund or  
21 for which a deposit into a segregated account is required under Chapter 214, RSMo, provided  
22 that a cemetery operator shall comply with sections 333.700 to 333.900 if the contract or

1 arrangement sold by the operator includes services that may only be provided by a licensed  
2 funeral director or embalmer;

3 (2) A contract of insurance, provided that sections 333.700 to 333.900 shall apply to any  
4 preneed contract sold with a preneed contract.

5 **PRENEED PROVIDER LICENSING**

6 333.720. 1. Except as provided herein, the provider designated in a preneed contract shall  
7 be obligated to provide the funeral or burial services, facilities, or merchandise as described in  
8 the preneed contract.

9 2. No person shall be designated as a provider, or agree to perform the obligations of  
10 a provider under a preneed contract unless, at the time of such agreement or designation, such  
11 person is licensed as a preneed provider by the Board. A preneed provider shall be authorized  
12 and registered with the Missouri Secretary of State to conduct business in Missouri and shall be  
13 licensed as a funeral establishment by the Board. A funeral establishment license shall not be  
14 required if the person is the owner of real estate situated in Missouri which has been formally  
15 dedicated for the burial of dead human bodies and the contract only provides for the delivery of  
16 one or more grave vaults and is in compliance with the provisions of chapter 214, RSMo;

17 3. An applicant for a preneed provider license shall:

18 (1) File an application on a form promulgated by the Board and pay a licensing fee of  
19 \_\_\_\_\_ dollars or in an amount promulgated by the Board by rule;

20 (2) Identify the name and address of a custodian of records responsible for maintaining  
21 the books and records of the provider relating to preneed contracts;

22 (3) Identify the name and address of each seller authorized by the provider to sell  
23 preneed contracts in which the provider is designated or obligated as the provider;

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

5 4. Each preneed provider shall apply to renew his or her license on or before October  
6 thirty-first of each year or a date established by the Board by rule. A license which has not been  
7 renewed prior to the renewal date shall expire. Applicants for renewal shall:

8 (1) File an application for renewal on a form promulgated by the Board by rule:

9 (2) Pay a renewal fee of \_\_\_\_\_ dollars or in an amount established by the Board by  
10 rule;

11 (3) File an annual report with the state board which shall contain:

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

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

16 (c) The name and address of each seller with whom it has entered into a written  
17 agreement since last filing an annual report with the Board authorizing the seller to designate or  
18 obligate the licensee as the provider in a preneed contract, and;

19 (d) Any information required by the Board by rule.

20 5. Any license not renewed as provided by this section shall become void. A  
21 licensee who fails to apply for renewal may apply for reinstatement by satisfying the  
22 requirements of section 4 of this section and paying a delinquent fee as promulgated by the  
23 Board by rule.

**PRENEED SELLER LICENSING**

333.725. 1. The preneed seller designated in a preneed contract shall be obligated to administer all payments made by or on behalf of a purchaser of a preneed contract and ensure the preneed contract is managed and fulfilled in compliance with sections 333.700 to sections 333.900 and as provided by the contract.

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

3. An applicant for a preneed seller license shall:

(1) File an application on a form promulgated by the Board and pay a licensing fee of \_\_\_\_\_ dollars or in an amount promulgated by the Board by rule;

(2) Be an individual resident of Missouri of eighteen years of age or a business entity duly registered with the Missouri Secretary of State to transact business in Missouri;

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

(4) Identify the name and address of each licensed provider that has authorized the seller to designate the licensee as a provider under a preneed contract;

(5) Has established, as grantor, a preneed trust or an agreement to utilize a preneed trust with terms consistent with sections 333.000 to 333.071. A trust shall not be required if the applicant certifies to the Board that the preneed seller will only sell insurance-funded or joint-account funded preneed contracts, and;

1 (6) Identify the name and address of a trustee or, or if applicable, the financial institution  
2 where any preneed trust or joint accounts will be maintained, and;

3 (7) File with the state board a written consent authorizing the state board to inspect or  
4 order an investigation, examination or audit of the seller's books and records which contain  
5 information concerning preneed contracts sold by or on behalf of the seller.

6 4. Each preneed seller shall apply to renew his or her license on or before October thirty-  
7 first of each year or a date established by the Board by rule. A license which has not been  
8 renewed prior to the renewal date shall expire. Applicants for renewal shall:

9 (1) File an application for renewal on a form promulgated by the Board by rule :

10 (2) Pay a renewal fee of \_\_\_\_\_ dollars or in an amount established by the Board by  
11 rule, and;

12 (3) File annually with the state board a signed and notarized annual report as provided by  
13 sections 333.700 to 333.900 on forms provided by the state board.

14 5. Any license not renewed as provided by this section shall become void. A  
15 licensee who fails to apply for renewal may apply for reinstatement by satisfying the  
16 requirements of section 4 of this section and paying a delinquent fee as promulgated by the  
17 Board by rule.

18 **PRENEED COUNSELORS**

19 333.730.1 Any person employed or otherwise authorized to sell, negotiate or solicit the  
20 sale of preneed contracts for or on behalf of a preneed seller shall be registered with the Board as  
21 a preneed counselor. The Board shall maintain a registry of all preneed counselors registered  
22 with the Board. The registry shall be deemed an open record and made available on the Board  
23 website.

2. An applicant for a preneed counselor registration shall:

(1) File an application on a form promulgated by the Board and pay a registration fee of \_\_\_\_\_ dollars or in an amount promulgated by the Board by rule which shall not exceed \_\_\_\_\_ percent of the application fee established by the Board pursuant to Chapter 333 for a funeral director license;

(2) Be eighteen years of age, and;

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

4. Each preneed counselor shall apply to renew his or her registration on or before October thirty-first of each year or a date established by rule of the Board. A registration which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form promulgated by the Board by rule;

(2) Pay a renewal fee of \_\_\_\_\_ dollars or in an amount promulgated by the Board by rule which shall not exceed \_\_\_\_\_ percent of the application fee established by the Board pursuant to Chapter 333 for a funeral director license, and;

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

5. Any registration not renewed as provided by this section shall become void and the registrant shall be immediately removed from the preneed counselor registry by the Board. A registrant who fails to apply for renewal may apply for reinstatement by satisfying the requirements of section 4 of this section and paying a delinquent fee as promulgated by the Board.



1 (1) Consent from the provider authorizing the seller to designate or obligate the  
2 provider under a preneed contract;

3 (2) Procedures for tracking preneed contract funds or payments received by the  
4 provider and for remitting such funds or payments to the seller, including, the time period  
5 authorized by the seller for the remittance of funds and payments, and;

6 (3) The signatures of the seller and the provider or their authorized representatives  
7 and the date such signature was obtained.

8 3. A provider shall notify the Board within fifteen days of authorizing or otherwise  
9 agreeing to allow a seller to designate him or her as the provider under any preneed contract.

10 4. Any person who knowingly permits a seller to sell a preneed contract designating  
11 him or her as the provider shall be obligated to provide the disposition or the funeral or burial  
12 facilities, merchandise and services described in the preneed contract for the beneficiary. If a  
13 provider has knowledge that a seller is designating him or her as the provider under any preneed  
14 contract and fails within thirty days after first obtaining such knowledge to take action to prevent  
15 the seller from so designating him or her as the provider and to inform the Board, the provider  
16 shall be deemed to have consented to such designation and shall be obligated under the contract  
17 as provided herein. Notice to the Board as required by this subsection shall be provided within  
18 thirty days of the provider having knowledge that a seller is designating him or her as the  
19 provider under a preneed contract without authorization.

20 5. The provisions of subsection 4 and 5 of this section shall not be construed to  
21 exempt any seller or provider from having a written agreement as required by this section.  
22 Failure to comply with the provisions of this section shall be cause for discipline of a preneed  
23 license or of any license issued by the Board under sections 333.000 to 333.700, RSMo.



1 (10) Include the name, address and phone number of any insurance company issuing an  
2 insurance policy used to fund the preneed contract;

3 (11) Identify the type of insurance that will be used to fund the insurance policy,  
4 including, the number of such policy, if available;

5 (12) Explain how interest will be distributed and designate the amount of administrative  
6 expenses that will be retained by the seller as authorized by this section;

7 (13) Identify any other type of expenses or taxes that may be deducted from preneed  
8 funds, and the amount of any such expense if known by the seller at the time of the sale;

9 (14) Include the name and signature of the purchaser, the preneed counselor responsible  
10 for the sale of, if any, and of the seller, or its duly authorized representative;

11 (15) Include the signature of the preneed provider if the preneed contract is sold to the  
12 purchaser by the provider.

13 (16) Include a disclosure statement immediately under the signature of the purchaser  
14 which states that the preneed seller and provider identified in the contract are licensed by the  
15 Missouri State Board of Embalmers and Funeral Directors and that complaints against a preneed  
16 provider, seller or counselor may be filed with the Missouri State Board of Embalmers and  
17 Funeral Directors. The statement required by this section shall also include the current address  
18 and phone number for the Board, and;

19 (14) Comply with the provisions of section 333.700 to 333.900 or any rule promulgated  
20 pursuant thereto.

21 2. A preneed contract shall be voidable and unenforceable at the option of the purchaser,  
22 or the purchaser's legal representative, if the contract is not in compliance with this section, not

1 issued by a preneed seller duly licensed by the Board or if the purchaser has not received a copy  
2 of the preneed contract signed by the seller.

3 3. If a preneed contract does not comply with the provisions of sections 333.700 to  
4 333.900, all payments made under such contract shall be recoverable by the purchaser, or the  
5 purchaser's legal representative, from the contract seller or other payee thereof, together with  
6 interest at the rate of ten percent per annum and all reasonable costs of collection, including  
7 attorneys' fees.

8 4. After *the seller retains any amount authorized by sections 333.700 to 333.900*, all  
9 funds paid by or on behalf of the purchaser as payment for a preneed contract shall be placed in  
10 trust, in a joint account or shall be used to purchase insurance, as authorized by sections 333.700  
11 to 333.900.

12 5. A preneed contract may not be redesignated as a trust-funded, insurance-funded or  
13 joint-account funded preneed contract without the consent of the purchaser.

14 **TRUST FUNDED PRENEED CONTRACTS**

15 333.745.1. A trust-funded preneed contract shall comply with sections 333.700 to  
16 333.900 and the specific requirements of sections 333.745 to 333.750.

17 2. The trustee of a preneed trust shall be a state or federally chartered financial  
18 institution authorized to exercise trust powers in Missouri. The trustee shall accept all deposits  
19 made to it for a preneed contract and shall hold, administer, and distribute such deposits, in trust,  
20 as trust principal, pursuant to sections 333.700 to 333.900.

21 3. The financial institution referenced herein may neither control nor be controlled  
22 by or under common control with the seller. The term "control" including terms, "controlled by"  
23 and "under common control" with, means the possession, direct or indirect, of the power to

1 direct or cause the direction of the management and polices of a person, whether through the  
2 ownership of voting securities, by contact other than the power is the result of an official position  
3 with or corporate office held otherwise, unless the power is the result of an official position with  
4 or corporate office held by the person. Control shall be presumed to exist if any person, directly  
5 or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten  
6 percent or more of the voting securities of any other person. This presumption may be rebutted  
7 by a showing to the board and within its sole discretion that control does not in fact exist.

8         4. Payments regarding two or more preneed contracts may be deposited into and  
9 commingled in the same preneed trust, so long as the trust's grantor is the seller of all such  
10 preneed contracts and the trustee maintains adequate records that individually and separately  
11 identify the payments, earnings and distributions for each preneed contract.

12         5. Within a reasonable time after accepting a trusteeship or receiving trust assets, a  
13 trustee shall review the trust assets and make and implement decisions concerning the retention  
14 and disposition of assets in order to bring the trust portfolio into compliance with the purposes,  
15 terms, distribution requirements, and other circumstances of the trust, and with the requirements  
16 of sections 333.700 to 333.900.

17         6. All expenses of establishing and administering a preneed trust, including, without  
18 limitation, trustee's fees, legal and accounting fees, investment expenses, and taxes, shall be paid  
19 or reimbursed directly by the seller of the preneed contracts administered through such trust and  
20 shall not be paid from the principal of a preneed trust. In investing and managing trust assets, a  
21 trustee may only incur costs that are appropriate and reasonable in relation to the assets, the  
22 purposes of the trust, and the skills of the trustee.

1           7. The seller of a preneed contract shall be entitled to all income, including, without  
2 limitation, interest, dividends, and capital gains, and losses generated by the investment of  
3 preneed trust property regarding such contract, and the trustee of the trust may distribute all  
4 income, net of losses, to the seller upon the final disposition of the beneficiary or provision of the  
5 funeral or burial services of facilities or funeral merchandise to or for the benefit of the  
6 beneficiary.

7           8. The trustee of a preneed trust shall maintain adequate books and records of all  
8 transactions administered through the trust and pertaining to the trust generally. The trustee shall  
9 assist the seller who established the trust or its successor in interest in the preparation of the  
10 annual report described in section 333.000. The seller shall furnish to each contract purchaser,  
11 within fifteen days after receipt of the purchaser's written request, a written statement of all  
12 deposits made to such trust regarding such purchaser's contract.

13           9. A preneed trust shall terminate when trust principal no longer includes any  
14 payments made under any preneed contract, and upon such termination the trustee shall  
15 distribute all trust property, including principal and undistributed income, to the seller which  
16 established the trust.

17           333.747.1 All property held in a preneed trust, including principal and undistributed  
18 income, shall be invested and reinvested by the trustee thereof and shall only be invested and  
19 reinvested in investments which have reasonable potential for growth or producing income.

20           2. A trustee shall invest and manage trust assets as a prudent investor would, by  
21 considering the purposes, terms, distribution requirements, and other circumstances of the trust.  
22 In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. In no  
23 instance shall funds in or belonging to a preneed trust be invested in any term life insurance

1 product. A trustee who has special skills or expertise, or is named trustee in reliance upon the  
2 trustee's representation that the trustee has special skills or expertise, has a duty to use those  
3 special skills or expertise when investing and managing trust assets, and;

4 3. A trustee shall diversify the investments of the trust unless the trustee reasonably  
5 determines that, because of special circumstances, the purposes of the trust are better served  
6 without diversifying.

7 4. In investing and managing trust assets, a trustee shall consider the following as are  
8 relevant to the trust:

9 (1) General economic conditions;

10 (2) The possible effect of inflation or deflation;

11 (3) The expected tax consequences of investment decisions or strategies;

12 (4) The role that each investment or course of action plays within the overall trust  
13 portfolio;

14 (5) The expected total return from income and the appreciation of capital;

15 (6) Other resources of the beneficiaries known to the trustee;

16 (7) Needs for liquidity, regularity of income, and preservation or appreciation of capital;

17 (8) An asset's special relationship or special value, if any, to the purposes of the trust or to  
18 one or more of the beneficiaries; and

19 (9) The size of the portfolio, nature and estimated duration of the fiduciary relationship  
20 and distribution requirements under the governing instrument.

21 9. It is unlawful for any trustee, preneed seller, preneed provider or preneed counselor to  
22 procure or accept a loan against any investment or asset of or belonging to a preneed trust.

1 333.749.1. A preneed trustee may delegate to an agent duties and powers that a prudent  
2 trustee of comparable skills could properly delegate under the circumstances. The trustee shall  
3 exercise reasonable care, skill, and caution in:

4 (1) Selecting an agent;

5 (2) Establishing the scope and terms of the delegation, consistent with the purposes and  
6 terms of the trust; and

7 (3) Periodically reviewing the agent's actions in order to monitor the agent's performance  
8 and compliance with the terms of the delegation.

9 2. In performing a delegated function, an agent owes a duty to the trust to exercise  
10 reasonable care to comply with the terms of the delegation.

11 3. By accepting a delegation of powers or duties from the trustee of a preneed trust, an  
12 agent submits to the jurisdiction of the courts of this state.

13 4. Delegation of an agent as provided herein shall not relieve the trustee of any duty or  
14 responsibility imposed on the trustee by sections 333.700 to 333.900 or the trust agreement.

15 333.750.1 A trustee shall not sale, invest or authorize any transaction involving the  
16 investment or management of trust property with:

17 (1) The spouse of the trustee;

18 (2) The descendants, siblings, parents, or spouses of a preneed seller or an officer,  
19 manager, director or employee of a preneed seller, provider or counselor;

20 (3) An agent or attorney of the trustee, preneed seller or provider; or

21 (4) A corporation or other person or enterprise in which the trustee, preneed seller,  
22 preneed provider, or a preneed provider owns a significant interest or has an interest that might  
23 affect the trustee's best judgment.

**INSURANCE-FUNDED PRENEED CONTRACTS**

333.750.1. An insurance-funded preneed contract shall comply with sections 333.700 to 333.900 and the specific requirements of this section.

2. In no event shall the seller or provider, or any agent, receive or collect from the purchaser of an insurance-funded preneed contract any amount in excess of what is required to pay the premiums on the insurance policy as assessed or required by the insurer as premium payments for the insurance policy. In no instance shall a preneed seller receive or collect any administrative or other fee to the purchaser for or in connection with an insurance funded preneed contract, other than those fees or amounts assessed by the insurer.

3. Payments collected by or on behalf of a preneed seller for an insurance funded preneed contract shall be promptly remitted to the insurer or the insurer's designee as required by the insurer, provided that in no event shall payments be retained or held by the preneed seller or counselor for more than thirty days from the date of receipt.

4. A preneed seller or any preneed counselor authorized to sell an insurance funded preneed contract on behalf of a seller shall disclose to the purchaser at the time of sale if the seller or counselor is a licensed insurance agent and if the seller or counselor will receive any commission, payment or other valuable consideration for the sale of the insurance product used to fund the contract.

5. In no instance shall any term life insurance policy be used to fund a preneed contract nor shall a preneed seller or provider be listed or otherwise designated as the owner of an insurance policy used to fund a preneed contract.

6. It is unlawful for a preneed seller, provider or counselor to procure or accept a loan against any insurance contract used to fund a preneed contract.

1           7.       No preneed seller or provider shall accept an assignment of insurance proceeds or  
2 knowingly allow the preneed seller or provider to be designated as the beneficiary in an  
3 insurance policy unless a preneed contract has also been issued by a licensed seller. A preneed  
4 contract shall only be required by this section if the insurance proceeds are to be used for the  
5 final disposition of a dead human body, or for funeral or burial services or facilities, or for  
6 funeral merchandise, where such disposition, services, facilities or merchandise are not  
7 immediately required *and the price of such services, facilities or merchandise are guaranteed by*  
8 *the provider or seller.* A preneed contract written pursuant to this subsection shall be deemed an  
9 insurance-funded preneed contract and shall comply with this section and all applicable  
10 provisions of sections 333.700 to 333.900.

11           9.       Laws regulating insurance shall not apply to preneed contracts, but shall apply to  
12 any insurance sold with a preneed contract.

### 13                           JOINT ACCOUNT-FUNDED PRENEED CONTRACTS

14           **\*\*\*NOTE: THIS SECTION IS STILL IN THE DRAFTING PROCESS\*\*\***

15           333.755.1. A joint account funded preneed contract shall comply with sections 333.700 to  
16 333.900 and the specific requirements of this section.

17           2.       In lieu of a trust-funded or insurance-funded preneed contract, a preneed seller  
18 and the purchaser may agree in writing that all funds paid by the purchaser for the preneed  
19 contract shall be deposited with a financial institution chartered and regulated by the federal or  
20 state government authorized to do business in Missouri in an account in the joint names and  
21 under the joint control of the provider and purchaser. There shall be a separate joint account  
22 established for each preneed contract sold or arranged under this section.

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

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

10          5. Income generated by preneed funds deposited pursuant to this section shall be  
11 used to pay the reasonable expenses of administering the account, and the balance of the income  
12 shall be distributed or reinvested as provided in the written agreement of the purchaser and seller.

13          6. A joint-funded preneed contract shall clearly designate the following:

14           (1) The name of the financial institution in which the account will be held and the  
15 account number;

16           (2) **STILL WORKING ON THIS;**

17          7. At any time before final disposition, or before the funeral or burial services,  
18 facilities, or merchandise described in a preneed contract are furnished, the purchaser may cancel  
19 the contract without cause by delivering written notice thereof to the seller and the financial  
20 institution. Within fifteen days of receipt of notice of cancellation, the financial institution shall  
21 distribute all deposited funds to the purchaser. Interest shall be distributed as provided in the  
22 agreement with the seller and purchaser;

1 8. Within fifteen days after a provider and a witness certifies to the financial  
2 institution in writing that he has furnished the final disposition, or funeral services, facilities, and  
3 merchandise described in a contract, or has provided alternative funeral benefits for the  
4 beneficiary pursuant to special arrangements made with the purchaser, the financial institution  
5 shall distribute the deposited funds, if the certification has been approved by the purchaser.

6 **ANNUAL REPORTS**

7 333.760. 1. Each preneed seller shall file an annual report with the Board which shall  
8 contain, at least the following information:

9 (1) The name, addresses and contract number of all purchasers as reflected in any  
10 preneed contract sold since the filing of the last report;

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

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

15 (4) The amount of funds received by the seller for payment on each preneed contract  
16 since the filing of the last report, identified by contract, and the date such funds were received;

17 (5) The total amount of funds retained by the seller for administrative expenses from  
18 payments received on behalf of a purchaser since the filing of the last report, identified by  
19 contract;

20 (6) The name, address and license number of all preneed counselors employed or  
21 authorized to sell preneed contracts on behalf of the seller;

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

1 (8) The number of all Missouri preneed contracts fulfilled by the preneed seller during  
2 the preceding calendar year;

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

4 (10) The name and address of the person designated by the seller as custodian of the  
5 seller's books and records relating to the sale of preneed contracts.

6 (11) Written consent authorizing the state board to order an examination and if necessary  
7 an audit of any joint or trust account established pursuant to sections 333.700 to 333.900,  
8 designated by depository or account number.

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

11 (13) The annual status report shall be certified under oath as complete and correct by an  
12 officer of the preneed seller. The preneed seller or officer shall be subject to the penalty of  
13 making a false affidavit or declaration, and;

14 (14) Any information deemed necessary by the Board to ensure compliance with  
15 sections 333.700 to 333.900.

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

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

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

21 (3) The current trust fund balance;

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

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

3 (6) A statement of all assets *and investments* of the trust listing cash, real or personal  
4 property, stocks, bonds, and other assets, showing cost, acquisition date and current market value  
5 of each asset and *investment*, and;

6 (8) Total expenses, excluding distributions to the preneed seller, since the previous  
7 report.

8 (9) The information required by subsections (1) to (8) of this section shall be certified to  
9 under oath as complete and correct by a corporate officer of the trustee. The trustee shall be  
10 subject to the penalty of making a false affidavit or declaration.

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

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

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

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

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

19 (5) Total earnings since the previous report;

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

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

1 (8) The information required by subsections (1) to (7) of this section shall be certified to  
2 under oath as complete and correct by an authorized representative of the financial institution.  
3 The affiant shall be subject to the penalty of making a false affidavit or declaration.

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

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

8 (2) The type of insurance purchased to fund each preneed contract, identified by  
9 contract;

10 (3) The total amount of funds collected by the seller for each preneed contract, including,  
11 any funds used to pay insurance premiums and the date such funds were received;

12 (4) The total amount of premiums received by the insurance company for each insurance  
13 policy used to fund a preneed contract sold by the preneed seller;

14 (5) *The status, total face value and total cash surrender value of each policy, and;*

15 (6) The information required by subsections (1) to (5) of this section shall be certified to  
16 under oath as complete and correct by an authorized representative of the insurer. The affiant  
17 shall be subject to the penalty of making a false affidavit or declaration.

18 5. All reports required by this section shall be filed by the thirty-first day of October  
19 of each year or by the date established by the Board by rule. Annual reports filed after the date  
20 provided herein shall be subject to a late fee of \_\_\_\_\_dollars for every month past the  
21 renewal deadline or in an amount established by rule of the Board.



1           (3) Conduct a financial examination of the books and records of a licensee, and if  
2 necessary an audit of a licensee or any trust or joint account, to determine *if preneed funds are*  
3 *being maintained or handled by the licensee as required by* sections 333.700 to 333.900. The  
4 Board shall conduct a financial examination of the books and records of each preneed seller as  
5 authorized by this section at least once every **[three/five]** years, as financially permissible  
6 pursuant to the funding of the board;

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

12           (a) The board shall not appoint or authorize any person to conduct an inspection,  
13 investigation, examination or audit pursuant to this section if the individual has a conflict of  
14 interest or is affiliated with the management of, or owns a pecuniary interest in, any person  
15 subject to inspection, investigation, examination or audit under section 333.000 to section  
16 333.999.

17           (b) The board may request that the director of the division of professional registration,  
18 the director of the department of insurance, financial institutions and professional registration, or  
19 the office of the attorney general designate one or more investigators or financial examiners to  
20 assist in any investigation, examination or audit.

21           3. Upon request by the board, a licensee or registrant shall make the books and  
22 records of the licensee or registrant available to the board for inspection and copying at any

1 reasonable time, including, any insurance, trust, joint account or financial institution records  
2 deemed necessary by the board to determine compliance with sections 333.700 to 333.900.

3 4. The board or a designated member thereof or any agent authorized by the board  
4 may enter the office, premises, establishment, or place of business of any preneed seller or  
5 provider of funeral service contracts licensed in this state, or any office, premises, establishment,  
6 or place where the practice of selling and/or providing preneed funerals is carried on, or where  
7 such practice is advertised as being carried on for the purpose of inspecting such office,  
8 premises, establishment, or place to determine compliance with sections 333.700 to 333.900, or  
9 for the purpose of inspecting, examining, investigating or auditing the licensee or the sale of  
10 preneed contracts.

11 5. The board shall have the power to issue a subpoena to compel the production of  
12 records and papers by any licensee or registrant of the board. Subpoenas issued pursuant to this  
13 section shall be served in the same manner as subpoenas in a criminal case.

14 6. All preneed sellers, providers and counselors shall cooperate with the state board  
15 or its designee, the division of finance, the department of insurance, financial institutions and  
16 professional registration and the office of the attorney general of Missouri, in any inspection,  
17 investigation, examination or audit brought under the provisions of sections 333.700 to 333.900.

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

1 8. If an investigation, audit or examination finds a violation of sections 333.700 to  
2 333.900, the office of the attorney general may initiate a judicial proceeding to:

- 3 (1) Declare rights;
- 4 (2) Approve a nonjudicial settlement;
- 5 (3) Interpret or construe the terms of the trust;
- 6 (4) Determine the validity of a trust or of any of its terms;
- 7 (5) Compel a trustee to report or account;
- 8 (6) Enjoin a trustee from performing a particular act or grant to a trustee any necessary or  
9 desirable power;
- 10 (7) Review the actions of a trustee, including the exercise of a discretionary power;
- 11 (8) Appoint or remove a trustee;
- 12 (10) Determine the liability of a trustee for an action relating to the trust and compel  
13 redress of a breach of trust by any available remedy;
- 14 (12) Approve employment and compensation of agents;
- 15 (13) Determine the propriety of investments or of principal and income allocations, or;
- 16 (17) Determine the timing and quantity of distributions and dispositions of assets.
- 17 (18) This section does not preclude any other authority vested in the attorney general by  
18 law.

19 **DISCIPLINARY ACTION**

20 333.770. 1. The board may refuse to issue any registration or license required by sections  
21 333.700 to 333.900 for one or any combination of causes stated in subsection 2 of this section.  
22 The board shall notify the applicant in writing of the reasons for the refusal and shall advise the

1 applicant of his right to file a complaint with the administrative hearing commission as provided  
2 by chapter 621, RSMo.

3 2. The board may cause a complaint to be filed with the administrative hearing  
4 commission as provided by chapter 621, RSMo, against any preneed seller or provider licensed  
5 with the board [or preneed counselor registered with the board] or any person who has failed to  
6 renew or has surrendered his license [or registration] for any one or any combination of the  
7 following causes:

8 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic  
9 beverage to an extent that such use impairs a person's ability to perform the work of any  
10 profession registered under sections 333.700 to 333.900;

11 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty  
12 or nolo contendere, in a criminal prosecution under the laws of any state or of the United States,  
13 for any offense involving the misappropriation or theft of funds, for any offense an essential  
14 element of which is fraud, dishonesty or an act of violence, or for any offense involving moral  
15 turpitude, whether or not sentence is imposed;

16 (3) Use of fraud, deception, misrepresentation or bribery in securing any license or  
17 registration pursuant to sections 333.700 to 333.900;

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

20 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty  
21 in the performance of the functions or duties of the profession for which the individual is  
22 licensed or registered;

1 (6) Violation of, or assisting or enabling any person to violate, any provision of sections  
2 333.700 to 333.900 or sections 333.700 to 333.900, or of any lawful rule or regulation adopted  
3 pursuant to Chapter 333 or sections 333.700 to 333.900;

4 (7) Impersonation of any person holding a preneed licensee or registration with the board  
5 or allowing any person to use his or her license or registration;

6 (8) Disciplinary action against the holder of any license or registration or other right to  
7 practice any profession regulated pursuant to this chapter or by any state, territory, federal  
8 agency or country upon grounds for which revocation or suspension is authorized in this state;

9 (9) A person is finally adjudged insane or incompetent by a court of competent  
10 jurisdiction;

11 (10) Misappropriation or theft of preneed funds;

12 (11) Assisting or enabling any person to practice or offer to practice as a preneed seller,  
13 preneed provider or preneed counselor as defined or regulated by sections 333.700 to 333.900  
14 who is not licensed or registered and currently eligible to practice under sections 333.700 to  
15 333.900;

16 (12) Issuance of a registration or license based upon a material mistake of fact;

17 (13) Failure to display or present a valid certificate or license if so required by sections  
18 333.700 to 333.900 or any rule promulgated thereunder;

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

20 (15) Make or file any report required by sections 333.000 to 333.999 which the licensee  
21 or registrant knows to be false or knowingly fail to make or file a report required by sections  
22 333.000 to 333.999;

1 (16) Use of any advertisement, solicitation or preneed contract which is false, misleading  
2 or deceptive to the general public or persons to whom the advertisement or solicitation is  
3 primarily directed, and;

4 (16) Willfully and through undue influence selling a preneed contract, or;

5 3. After the filing of such complaint, the proceedings shall be conducted in accordance  
6 with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing  
7 commission that the grounds, provided in subsection 2, for disciplinary action are met, the board  
8 may, singly or in combination, censure or place the person named in the complaint on probation  
9 on such terms and conditions as the board deems appropriate for a period not to exceed five  
10 years, or may suspend, for a period not to exceed three years, or revoke the license.

11 4. Notwithstanding any other provision of this section, the board may automatically  
12 suspend a license if the board finds, after an inspection, examination, investigation or audit and  
13 after providing the licensee an opportunity to respond, a shortage in the trust fund or joint  
14 account which exceeds [*twenty percent of the amount required to be held in the trust or joint*  
15 *account or fifty thousand dollars, whichever is lesser*] or upon being adjudicated and found  
16 guilty, or entering a plea of guilty or nolo contendere, in a criminal prosecution under the laws of  
17 any state or of the United States, for any offense involving the stealing, misappropriation or theft  
18 of funds.

19 5. A person whose license was suspended under subsection 4 of this section may appeal  
20 such suspension to the administrative hearing commission. Notice of such appeal must be  
21 received by the administrative hearing commission within ninety days of mailing, by certified  
22 mail, the notice of suspension. Failure of a person whose license was suspended to notify the  
23 administrative hearing commission of his or her intent to appeal waives all rights to appeal the

1 suspension. Upon notice of such person's intent to appeal, a hearing shall be held before the  
2 administrative hearing commission.

3 6. Use of the procedures set out in this section shall not preclude the application of  
4 the provisions of subsection 2 of section 333.061.

5 333.775. If a seller shall fail to make timely payment of an amount due a purchaser, or a  
6 provider pursuant to the provisions of sections 333.700 to 333.900, the purchaser or provider, as  
7 appropriate, shall have the right, in addition to other rights and remedies against such seller, to  
8 make demand upon the trustee of the preneed trust for the contract to distribute to the purchaser  
9 or provider from the trust, as damages for its breach, an amount equal to all deposits made into  
10 the trust for the contract.

11 333.780. Upon the death or legal incapacity of a purchaser, all rights and remedies  
12 granted to the purchaser pursuant to the provisions of sections 333.700 to 333.900 shall be  
13 enforceable by and accrue to the benefit of the purchaser's legal representative or his successor  
14 designated in such contract, and all payments otherwise payable to the purchaser shall be paid to  
15 that person.

16 333.785. 1. Any person, including the officers, directors, partners, agents, or employees  
17 of such person, who shall knowingly and willfully violate or assist or enable any person to  
18 violate any provision of sections 333.700 to 333.900 by incompetence, misconduct, gross  
19 negligence, fraud, misrepresentation, or dishonesty is guilty of a class D felony. Each violation  
20 of any provision of sections 333.700 to 333.900 constitutes a separate offense and may be  
21 prosecuted individually. The attorney general shall have concurrent jurisdiction with any local  
22 prosecutor to prosecute under this section.





1 (e) The date the provider intends to sell or otherwise dispose of its business assets, or its  
2 stock if a corporation, or to cease to doing business, and;

3 (f) Any other information required by the Board by rule.

4 3. Within three days after the provider sells or transfers its assets or stock or ceases doing  
5 business, the former provider shall notify each seller in writing that the former provider has sold  
6 or transferred its assets or stock or has ceased doing business.

7 (a) Within thirty days after the seller receives notification from the provider under this  
8 subsection, the seller shall provide written notification to all purchasers with outstanding preneed  
9 contracts in which the former provider was designated as provider indicating that the provider  
10 has transferred ownership or has ceased doing business. Such notice shall give the purchaser the  
11 option to select another provider that has a written agreement with the seller pursuant to the  
12 provisions of sections 333.000 or to cancel the contract if an alternate provider is not accepted by  
13 the purchaser.

14 (b) If an alternate provider is selected by the purchaser, the seller shall amend the  
15 preneed contract to reflect the change in provider and shall notify the new provider of the  
16 designation;

17 (c) If the purchaser elects to cancel the contract, the seller shall refund all amounts paid  
18 by or on behalf of the purchaser *and any related interest*. Nothing in this section shall be  
19 construed to prohibit a seller from seeking reimbursement from the former provider of any funds  
20 paid to the purchaser after a cancellation authorized by this subsection.

21 4. A preneed provider not subject to subdivision 1 of this section may only transfer its  
22 obligations as a provider to an alternate provider upon the consent of the seller, purchaser and the  
23 provider assuming the provider obligations under the contract. If an alternate provider is

1 selected by the purchaser, the seller shall amend the preneed contract to reflect the change in  
2 provider and shall provide the purchaser with a copy of the amended contract.

3 5. The office of the attorney general shall have authority to initiate legal action to  
4 compel or otherwise ensure compliance with this section by a former preneed provider licensee.

5 **TERMINATION OF BUSINESS- SELLER**

6 333.805.1 A preneed seller that intends to sell or otherwise dispose of *all or a majority* of  
7 its business assets, or its stock if a corporation, shall notify the Board at least sixty days prior to  
8 selling or otherwise disposing of its assets or stock, or ceasing to do business as a preneed seller,  
9 and shall file a notification report on a form established by the board.

10 2. The report required by this section shall include:

11 (a) A final annual report containing the information required by section 333.000;

12 (b) The name, address and phone number of a custodian for the books and records of the  
13 seller that contain information about preneed contracts in which the licensee is or was formerly  
14 designated as seller;

15 (c) The date the seller intends to sell or otherwise dispose of its business assets, or its  
16 stock if a corporation, or to cease to doing business;

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

21 (e) In lieu of the notarized statement required by subdivision (8), the seller may file a  
22 plan detailing how the assets of the seller will be set aside and used to service all outstanding  
23 preneed contracts sold by the seller, and;

1 (f) Any other information required by the Board by rule.

2 3. Within thirty days after assuming the obligations of a seller pursuant to this section,  
3 the assuming preneed seller shall:

4 (1) Notify each provider in writing that the former seller has sold or transferred its assets  
5 or stock or has ceased doing business, and;

6 (2) Provide written notification to the purchasers of each preneed contract assumed by  
7 the seller indicating that the former seller has transferred ownership or has ceased doing  
8 business. Such notice shall give the purchaser the option to maintain or to cancel the contract. If  
9 the purchaser elects to cancel the contract, the seller shall refund all amounts paid by or on behalf  
10 of the purchaser *and any related interest*. This section shall not be construed to limit or  
11 otherwise restrict any civil or other legal right a purchaser or provider may have against the seller  
12 for damages, breach of a contractual relationship or for unpaid fees.

13 4. Upon receipt of the written notification, the state board or the office of the  
14 attorney general may take reasonable and necessary action to determine that the seller has made  
15 proper plans to assure that the trust assets of the seller will be set aside and used to service  
16 outstanding preneed contracts sold by the seller. Such action may include, but is not limited to,  
17 an examination of books and records or audit of the trust account. The attorney general shall be  
18 authorized to bring legal action to ensure compliance with this section including an action for  
19 injunctive or declaratory relief.

20 5. A preneed seller not subject to subdivision 1 of this section may only transfer its  
21 obligations as a seller under a preneed contract to an alternate seller upon consent of the  
22 purchaser and the person assuming the obligations of the seller under the contract. If the  
23 purchaser fails to consent, the seller shall refund all amounts paid by or on behalf of the

1 purchaser with any related interest or earnings. If the purchaser and seller consent to the transfer,  
2 the seller shall amend the preneed contract to reflect the change and shall provide the purchaser  
3 with a copy of the amended contract.

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

8 7. The office of the attorney general shall have authority to initiate legal action to  
9 compel or otherwise ensure compliance with this section by a former preneed provider licensee.

10 333.810. A preneed contract may offer the purchaser the option to acquire and maintain  
11 credit life insurance on the life of the purchaser. Such insurance shall provide for the payment of  
12 death benefits to the seller in an amount equal to the total of all contract payments unpaid as of  
13 the date of such purchaser's death, and shall be used solely to make those unpaid payments.

14 333.820. If a seller shall fail to make timely payment of an amount due a purchaser or a  
15 provider pursuant to the provisions of sections 333.700 to 333.900, the purchaser or provider, as  
16 appropriate, shall have the right, in addition to other rights and remedies against such seller, to  
17 make demand upon the trustee of the preneed trust for the contract to distribute to the purchaser  
18 or provider from the trust, as damages for its breach, an amount equal to all deposits made into  
19 the trust for the contract.

20 333.830. Upon the death or legal incapacity of a purchaser, all rights and remedies  
21 granted to the purchaser pursuant to the provisions of sections 333.700 to 333.900 shall be  
22 enforceable by and accrue to the benefit of the purchaser's legal representative or the purchaser's

1 successor designated in such contract, and all payments otherwise payable to the purchaser shall  
2 be paid to that person.

3 333.840. Each seller shall remit an annual reporting fee in an amount of \_\_\_\_ dollars for  
4 each preneed contract sold in the year since the date the seller filed its last annual report with the  
5 state board. This reporting fee shall be paid annually and may be collected from the purchaser of  
6 the preneed contract as an additional charge or remitted to the state board from the funds of the  
7 seller. The reporting fee shall be in addition to the fees authorized by section 333.000.

8 **RULEMAKING**  
9

10 333.850. 1. The board shall establish the amount of the fees authorized in this chapter and  
11 required by rules promulgated thereunder. Such fees shall be set at a level to produce revenue  
12 which does not substantially exceed the cost and expense of administering this chapter.

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

17 4. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is  
18 created under the authority delegated in this section shall become effective only if it complies  
19 with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section  
20 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers  
21 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the  
22 effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the  
23 grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be  
24 invalid and void.