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(HLC Comment – Homesteaders does not have a trust option so Homesteaders will not comment on trust provisions of this proposal except to the extent that we have overall concerns that are apparent though trust operations are not an area of broad experience.)

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) "Audit"

(2) "Funeral 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; (HLC Comment – This should be funeral beneficiary so there is no confusion with the life insurance term "beneficiary" which has a completely different meaning.)

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

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

(45) "Examination of books and records"

(6)"Guaranteed contact"

(7) "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; (Meierhoffer)

"Funeral merchandise" caskets, grave vaults, grave lots, grave space, grave markers, monuments, tombstones, crypts, niches, mausoleums, or receptacles and other personal property incidental to the final disposition of human remains. (Euler)

(8) "Funeral service" (Meierhoffer)

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

(10) "Investigation"

(611) "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 with the Seller/Provider and the consumer; (HLC Comment – Need to say who the joint-account is held.)

(712) "Market value" – See DIFP Comment

(13) "Non-guaranteed contract"

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

(815) "Preneed contract", any contract or other arrangement which thatprovides for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not limited to, an agreement providing for a membership fee or any other fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount; (Meierhoffer) (HLC Comment -- What is the membership that is being talked about in this paragraph?)

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(916) “Preneed Counselorsales agent,” any person authorized to sell a preneed contract on behalf of a preneed seller; (Solocum)

(1017) "Preneed trust", a trust established by a seller, as grantor, to receive deposits of, administer, and disburse payments received under preneed contracts by such seller, together with income thereon;

(1118) "Provider", the person designated to provide the disposition, merchandise, facilites or funeral services, facilities, or merchandise described in a preneed contract; (Euler)

(1219) "Purchaser", the person who is obligated to pay under a preneed contract;

(1320) "Seller", the person who ~~sells~~ executes a preneed contract ~~to~~ with a purchaser and who is obligated ~~to collect and administer all payments made~~ under such preneed contract; (HLC Comment – Under a life insurance funded preneed contract the Seller should only collect the initial premium and the policyowner will then remit any remaining premiums directly to the insurance company. This eliminates the possibility of the premiums not being remitted, or not being remitted in a timely manner. Any responsibilities the parties may have respective to the collection or administration of payments should be detailed in a place other than the definitions, as you appear to have already done in 333.725.)

(1421) "Trustee", the trustee of a preneed trust, including successor trustees.

(1522) “Trust-Funded” Preneed Contract- A preneed contract which provides that payments for the preneed contract shall be deposited and maintained in trust.

APPLICABILITY

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

(1) Any contract or other arrangement sold by a cemetery operator for which payments received by or on behalf of the purchaser are required to be placed in an endowed care fund or

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for which a deposit into a segregated account is required under Chapter 214, RSMo, provided that a cemetery operator shall comply with sections 333.700 to 333.900 if the contract or arrangement sold by the operator includes services that may only be provided by a licensed funeral director or embalmer;

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

PRENEED PROVIDER LICENSING

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

2. No person shall be designated as a provider, or agree to perform the obligations of a provider under a preneed contract unless, at the time of such agreement or designation, such person is licensed as a preneed provider by the Board. Nothing in this section shall exempt any person from meeting the licensure requirements for a funeral establishment as provided in this chapter. (Grinston) A preneed provider shall be authorized and registered with the Missouri Secretary of State to conduct business in Missouri and shall be licensed as a funeral establishment by the Board. A funeral establishment license shall not be required if the person is the owner of real estate situated in Missouri which has been formally dedicated for the burial of dead human bodies and the contract only provides for the delivery of one or more grave vaults and is in compliance with the provisions of chapter 214, RSMo; (Euler)

3. An applicant for a preneed provider 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 authorized and registered with the Missouri Secretary of State to conduct business in Missouri; (Euler)

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

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

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

(6) Each applicant, or if a corporation, each officer, director, manager, or controlling shareholder, shall be of good morale character; (Euler)

(7) Have obtained a high school diploma or equivalent thereof; and (Euler)

(8) Meet all requirement for licensure. (Euler)

4. Each preneed provider shall apply to renew his or her license on or before October thirty-first of each year or a date established by the Board by rule. A license 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 established by the Board by rule;

(3) Be authorized and registered with the Missouri Secretary of State to conduct business in Missouri; (Euler)

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

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

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

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

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

5. Any license not renewed as provided by this section shall become void. A licensee 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 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, excluding insurance premium payments made by a consumer, and ensure the preneed contract is managed and fulfilled, and payments remitted, in compliance with sections 333.700 to sections 333.900 and as provided by the contract. (Euler) (HLC Comment -- Under a life insurance funded preneed contract the Seller should only collect the initial premium and the policyowner will then remit any remaining premiums directly to the insurance company. This eliminates the possibility of the premiums not being remitted, or not being remitted in a timely manner.)

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) Each applicant, or if a corporation, each officer, director, manager, or controlling shareholder, shall be of good morale character; (Euler)

(4) Have obtained a high school diploma or equivalent thereof; and (Euler)

(5) Meet all requirement for licensure. (Euler)

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

(47) 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;

(58) Has Have 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; (Meierhoffer)

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

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

4. Each preneed seller shall apply to renew his or her license on or before October thirty-first of each year or a date established by the Board by rule. A license 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 established by the Board by rule, and;

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

5. Any license not renewed as provided by this section shall become void. A licensee 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 by rule.

PRENEED COUNSELORSALES AGENTS

COMMENT: Licensed funeral directors or apprentices need not be designated as pre-need sales agents. They should not have to pay extra fees nor need to file extra paperwork. They are already qualified. (Kutis) (HLC Comment – This should be codified, see 333.730.1.)

333.730.1 Any person employed or otherwise authorized to sell, negotiate or solicit the sale of preneed contracts for or on behalf of a preneed seller, except licensed funeral directors or apprentices, shall be registered with the Board as a preneed counselorsales agent. The Board

shall maintain a registry of all preneed counselorsales agents registered with the Board. The registry shall be deemed an open record and made available on the Board website.

2. An applicant for a preneed counselorsales agent 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) Each applicant, or if a corporation, each officer, director, manager, or controlling shareholder, shall be of good morale character; (Euler)

(4) Have obtained a high school diploma or equivalent thereof; and (Euler)

(5) Meet all requirement for licensure; and (Euler)

(36) 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 counselorsales agent 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;

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

(4) Meet all requirements for licensure.

5. Any registration not renewed as provided by this section shall become void and the registrant shall be immediately removed from the preneed counselorsales agent 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.

6. Notwithstanding any other provision of law, the Board may remove a preneed counselorsales agent from the registry if the counselor agent has been adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under sections 333.700 to 333.900, for any offense involving the misappropriation or theft of, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed.

7. A preneed counselorsales agent who has been removed from the registry by the Board may appeal the removal to the administrative hearing commission. Notice of such appeal must be received by the administrative hearing commission within thirty days of mailing, by certified mail, the notice of removal. Failure of a preneed counselorsales agent registrant to notify the administrative hearing commission of his or her intent to appeal waives all rights to

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appeal the removal. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing commission in accordance with Chapter 621, RSMo.

8. No person shall sell, negotiate or solicit the sale of any preneed on behalf of a preneed seller unless registered as a preneed counselorsales agent as required by this section.

SELLERS & PROVIDERS

333.738. 1. No seller or preneed counselorperson shall be designated a person as a provider in a preneed contract unless the provider has a written contractual agreement with the preneed seller. Any seller who designates a person as a provider in a preneed contract without a contractual relationship with such person is in violation of the provisions of sections 333.700 to 333.900. (Euler)

2. The written agreement required by this section shall include:

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

(2) Procedures for tracking preneed contract funds or payments received by the provider in association with trust-funded preneed contracts or joint-account funded preneed contracts, and for remitting such funds or payments to the seller, including, the time period authorized by the seller for the remittance of funds and payments, and; (HLC Comment – Under a life insurance funded preneed contract the Seller/Provider should only collect the initial premium and the policyowner will then remit any remaining premiums directly to the insurance company. This eliminates the possibility of the premiums not being remitted, or not being remitted in a timely manner.)

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

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

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

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

6. Upon request of the board, a licensed seller or provider shall provide a copy of any preneed contract or any contract or agreement with a seller or provider to the Board.

PRENEED CONTRACT REQUIREMENTS

333.740. 1. A preneed contract made after August 28, 2009, shall be in writing and shall clearly and conspicuously:

(1) Include ~~the contract number~~ on the face of the contract ~~and~~ the name, address and phone number of the purchaser and beneficiary; ~~Shall be numbered, but only after all~~

~~conditions are met and the contract completed. (Kutis)~~ (HLC Comment – Preneed contract numbering sounds great but it is an exercise in futility which provides no great advantages or benefits to anyone. Contact Iowa's regulator, Dennis Britson 515-281-4441, for a discussion about this numbering "gift" he was given by the Iowa legislature.)

(2) Identify the name, address, phone and license number of the preneed provider and the preneed seller;

(3) Set out in detail the final disposition arrangements for the beneficiary or the funeral or burial services, facilities and merchandise to be provided;

(4) Identify on its face whether the contract is trust-funded, insurance-funded or joint-account funded;

(5) Designate whether the costs for the final disposition or the funeral or burial services, facilities or merchandise are guaranteed or nonguaranteed. If only a portion of the costs are guaranteed, the contract shall clearly and separately identify the costs that are guaranteed and the costs that are non-guaranteed;

(6) Prominently identify how ~~if~~ the contract may be revoked ~~is revocable or irrevocable~~; (HLC Comment -- Preneed contracts should not be made irrevocable, only the funding should be made irrevocable to qualify for government aide. Making a preneed contract irrevocable appears to impair the consumers freedom of choice as to funeral service providers and also gives the appearance to the consumer that their funding may not be portable.)

(7) Set forth the terms for cancellation by the purchaser or by the seller on default of payment, and transfer of the contract or reassignment of the funding; (Meierhoffer).

(8) Identify the preneed trust or joint account into which contract payments shall be deposited, including the name and address of the trustee or the financial institution thereof; (HLC

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Comment – This section should be moved to the trust funding section and the joint account funding section since it is directly related to them.)

(10) Include the name, address and phone number of any insurance company issuing an insurance policy used to fund the preneed contract; (HLC Comment -- This should be placed in the Insurance-Funded Preneed Contract section since it is related directly to insurance.)

(11) ~~Identify the type of insurance that will be used to fund the insurance policy, including, the number of such policy, if available~~; (HLC Comment -- You have excluded term insurance later in the statutes. All other types of insurance should permissible. Why list the type?

The policy number is not known until the life insurance policy has been issued so why propose this language to make it seem like the policy number is known before it is issued.

The consumer will know the type of policy and the policy number when they receive the actual policy since the policy is delivered directly to the consumer.)

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

(1312) Identify any other type of expenses or taxes that may be deducted from preneed funds, and the amount of any such expense if known by the seller at the time of the sale; (HLC Comment -- This section should be moved under trust-funded preneed contracts since none of the other types will have expenses or taxes deducted.)

(1413) Include the name and signature of the purchaser, and the individual responsible for the sale of the contract which will be either the preneed counselorsales agent ~~responsible for the sale of, if any, and of~~ the seller, or its duly authorized representative, or the preneed provider or its designee;

~~(1514) Include the signature of the preneed provider, or their designee, if the preneed contract is sold to the purchaser by the provider.; and (Meierhoffer).~~ (HLC Comment -- In regards to subsections 13 and 14, it should be limited to the signatures of those who are immediately present at the sale of the contract. The preneed sales agent has the authority to sign on behalf of the seller who hired them and the seller has a contract with the provider that allows them to enter into the preneed contracts on their behalf. Looking for other signatures will delay the transaction for everyone.)

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

(1415) Comply with the provisions of section 333.700 to 333.900 or any rule promulgated pursuant thereto.

2. A preneed contract shall be voidable and unenforceable at the option of the purchaser, or the purchaser's legal representative, if the contract is not in compliance with this section, not issued by a preneed seller duly licensed by the Board or if the purchaser has not received a copy of the preneed contract signed by the seller or their designee. (Meierhoffer).

3. If a preneed contract does not comply with the provisions of sections 333.700 to 333.900, all payments made under such contract shall be recoverable by the purchaser, or the purchaser's legal representative, from the contract seller or other payee thereof, together with

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interest at the rate of ten percent per annum and all reasonable costs of collection, including attorneys' fees (Meierhoffer).

4. After ***the seller retains any amount authorized by sections 333.700 to 333.900***, (HLC Comment – This portion of the paragraph only applies to trust-funded preneed contracts and should be moved to be under the trust section. It should not be in this section as it makes it look like the seller may retain fees for contracts funded by life insurance or monies placed in a joint-account.) all funds paid by or on behalf of the purchaser as payment for a preneed contract shall be placed in trust, in a joint account or shall be used to purchase insurance, as authorized by sections 333.700 to 333.900.

5. A preneed contract may not be redesignated as a trust-funded, insurance-funded or joint-account funded preneed contract without the consent of the purchaser. A seller, provider, or sales agent may not secure the purchaser's consent without providing the purchaser a written statement explaining in plain language any financial consequences the redesignation may have. These shall include, at a minimum, any reduction in cash surrender value, interest accrual, and fees as provided in this section. The seller, provider, or sales agent must secure the purchaser's signature on such a disclosure statement or purchaser will not be deemed to have consented to the redesignation. (Solocum)

TRUST FUNDED PRENEED CONTRACTS

333.745.1. A trust-funded preneed contract shall comply with sections 333.700 to 333.900 and the specific requirements of sections 333.745 to 333.750. A seller shall deposit payments received on a trust funded preneed contact into a trust designated by this section within

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~~forty five~~thirty days of receipt of such funds by the seller or its designee. (Grinston) (HLC Comment – most states allow for thirty days, forty five is a long time.)

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

3. The financial institution referenced herein may neither control nor be controlled by or under common control with the seller. The term "control" including terms, "controlled by" and "under common control" with, means the possession, direct or indirect, of the power to direct or cause the direction of the management and polices of a person, whether through the ownership of voting securities, by contact other than the power is the result of an official position with or corporate office held otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing to the board and within its sole discretion that control does not in fact exist.

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

5. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention

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and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of sections 333.700 to 333.900.

6. All expenses of establishing and administering a preneed trust, including, without limitation, trustee's fees, legal and accounting fees, investment expenses, and taxes, shall be paid or reimbursed directly by the seller of the preneed contracts administered through such trust and shall not be paid from the principal of a preneed trust. In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee. COMMENT: Other states allow the trustee to deduct a small, reasonable fee directly from the trust. Missouri may want to consider allowing this, perhaps ¾ of 1%. (Solocum)

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

(b)The seller of a non-guaranteed preneed contract shall be entitled to all income up to the cost of the services and merchandise provided at the time of need. If there is excess income after payment to the seller, the trustee shall distribute the excess income to the estate of the funeral beneficiary. If the cost of the services and merchandise are greater than the income of the trust, the seller may request those responsible for the funeral pay the difference between the

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trust income and the funeral bill. (HLC Comment – need to distinguish between guaranteed and non-guaranteed preneed contracts and what happens with the funding.)

8. The trustee of a preneed trust shall maintain adequate books and records of all transactions administered through the trust and pertaining to the trust generally. The trustee shall assist the seller who established the trust or its successor in interest in the preparation of the annual report described in section 333.000. The seller shall furnish to each contract purchaser, within fifteen days after receipt of the purchaser's written request, a written statement of all deposits made to such trust regarding such purchaser's contract (Plus principal, plus interest from the year and principal plus interest over the life of the trust). (Solocum)

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

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

2. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. In no instance shall funds in or belonging to a preneed trust be invested in any term life insurance product. A trustee who has special skills or expertise, or is named trustee in reliance upon the

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trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise when investing and managing trust assets, and;

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

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

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

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

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

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

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

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

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

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

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

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

(1) Selecting an agent;

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

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

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

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

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

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

(1) The spouse of the trustee;

(2) The descendants, siblings, parents, or spouses of a preneed seller or an officer, manager, director or employee of a preneed seller, provider or counselorpreneed sales agent;

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

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

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333.751.1 If a preneed contract is funded by a trust, the preneed contract shall set forth the terms for cancellation by the purchaser or by the seller on default of payment and transfer of the contract.

INSURANCE-FUNDED PRENEED CONTRACTS

SEE DIFP document.

333.750751.1. 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 the initial premium payment ~~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~~. (HLC Comment – the seller/provider should only collect the initial premium payment that gets sent in with the application form. All other premium payments should be made by the policyonwer directly to the insurance company. Insurance companies do not charge any fees or assessments.)

3. Initial premium Ppayments 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 preneed sales agent for more than thirty days from the date of receipt~~. (HLC Comments – as stated in earlier comments, the seller/provider should only collect

the initial premium and that should be remitted immediately. Allowing them to collect successive insurance premium payments is ripe for problems including but not limited to: premiums not being remitted, remitting them too late and the policyowner receives a double billing notice since the last payment was not received in time, etc.)

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. (Meierhoffer)

A preneed seller or any preneed sales agent authorized to sell an insurance funded preneed contract on behalf of a seller shall disclose, in either oral or written format, to the purchaser at the time of sale if the seller or preneed sales agent is a licensed insurance agent and if the seller or preneed sales agent will receive any commission, payment or other valuable consideration, for the sale of the insurance product used to fund the contract ~~and the amount or percentage of any such payments or commissions, (Solocum)~~.(HLC Comments – the NAIC Model for insurance funded disclosures should be used for the sake of uniformity. The percentage of commissions is not required in the NAIC Model.)

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 or beneficiary of an insurance policy used to fund a preneed contract.(HLC Comment – allowing the provider to be named owner or beneficiary of the policy appears to impair the consumers right to freedom of choice of providers. The funeral home as beneficiary would allow the funeral home to receive the proceeds whether they provided the goods and services or not. The

assignment of the policy proceeds allows the funeral home to receive the death benefits if they perform and still allows the consumer the freedom of choice to assign the proceeds to another funeral home of their choice.)

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

7. ~~No preneed seller or provider shall accept an assignment of insurance proceeds or knowingly allow the preneed seller or provider to be designated as the beneficiary in an insurance policy unless a preneed contract has also been issued by a licensed seller. A preneed contract shall only be required by this section if the insurance proceeds are to be used for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required *and the price of such services, facilities or merchandise are guaranteed by the provider or seller*. A preneed contract written pursuant to this subsection shall be deemed an insurance-funded preneed contract and shall comply with this section and all applicable provisions of sections 333.700 to 333.900.~~(HLC Comment – having this section in would eliminate the ability to have a non-guaranteed contract, which many providers now prefer. If the Board intends to control or eliminate final expense life insurance assignments we need more discussions about this topic.)

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

10. If a preneed contract is funded by a life insurance polciy, the preneed contract shall set forth:

(1) The terms for cancellation by the purchaser or by the seller on default of payment and transfer of the contract; and

(2) Cancellation of the preneed contract will not cancel the life insurance policy funding the preneed contract. The purchaser must cancel the insurance policy with written notification to the insurance company; and

(3) The purchaser will only receive the cash surrender value of the policy, which may be less than the amount paid in, if the policy is cancelled after ___ days; and

(4) The purchaser has the right to reassign the life insurance policy to another funeral home at any time.

(HLC Comment – these items are specific to a life insurance funded preneed contract and need to be set forth in the contract.)

11. (a)The provider of a guaranteed life insurance funded preneed contract shall be entitled to all death benefits of the life insurance policy upon providing evidence satisfactory to the insurance company that all services and merchandise were provided at the time of need.

(b)The provider of a non-guaranteed life insurance funded preneed contract shall be entitled to all death benefits of the life insurance policy up to the cost of the services and merchandise provided at the time of need upon providing evidence satisfactory to the inurance copany that all services and merchandise were provided at the time of need. If there are excess death benefits after payment to the provider, the insurance company shall pay the excess to the named beneficiary of the insurance policy or to the estate of the funeral beneficiary if no beneficiary is named in the policy. If the cost of the services and merchandise are greater than the death benefits available in the policy, the provider may request those responsible for the funeral pay the difference between the death benefits available and the funeral bill. (HLC

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Comment – need to distinguish between guaranteed and non-guaranteed preneed contracts and what happens with the funding.)

JOINT ACCOUNT-FUNDED PRENEED CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

ANNUAL REPORTS

SEE DIFP document.

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

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(1) The name and, addresses ~~and contract number~~ of all purchasers with preneed funeral contracts in-force at the time of the report; ~~as reflected in any preneed contract sold since the filing of the last report~~; (HLC Comment – The Board should collect information about contracts that are in-force at the time of the report, not just those that were sold since the last report.)

(2) The total number and total face value of preneed contracts in-force at the time of the report ~~sold since the filing of the last report~~; (HLC Comment – again you want those reported that are in-force, not just new ones that have been sold.)

(3) The preneed contract amount of each preneed contract in-force at the time of the report~~sold since the filing of the last report, identified by contract~~; (HLC Comment – see previous two comments.)

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

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

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

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

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

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

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

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

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

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

(14) Certification that Aa copy of each preneed contract sold is contained in files kept by the seller, which may be kept as ~~provided by~~ a scanned electronic copy; and (Solocum) (HLC Comment – there is no need to include copies of each preneed contract sold with the annual report since the Seller can be audited at any time with the auditor reviewing these files for compliance. Also note that under section 333.762 they must keep a copy of the contract in their files.)

(1415) Any information deemed necessary by the Board to ensure compliance with sections 333.700 to 333.900.

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

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

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

(3) The current trust fund balance;

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

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

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

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

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

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

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

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

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

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

(5) Total earnings since the previous report;

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

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

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

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

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

(2) ~~The type of insurance purchased to fund each preneed contract, identified by contract~~; (HLC Comment – this information would be included in the seller's files which the auditor can review. There is no term insurance allowed so therefore it will be regular life insurance or annuities that are sold.)

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

(4) ~~The total amount of premiums received by the insurance company for each insurance policy used to fund a preneed contract sold by the preneed seller~~*;* (HLC Comment – Subsections 3 and 4 are items that are controlled by the insurance regulators and should not be subject to reporting to the Board. In addition, the seller should not be collecting any premiums other than the initial premium.)

(5) The status, and total available death benefitl ~~*face value and total cash surrender value*~~ *of each policy in-force at the time of the report, and*; (HLC Comment – the cash surrender value is not a pertinent number to have on a report. To get current value you need to have the death benefit that is available at the time of the report.)

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

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

6. A seller who fails to file their annual report on or before the thirty-first day of October shall be prohibited from selling any preneed contracts until the annual report, and all applicable fees, have been paid to the board.

RECORD RETENTION

333.762. A preneed seller shall maintain:

(1) Adequate records of all preneed contracts and related agreements with providers, the trustee of a preneed trust, or the financial institution holding a joint account established pursuant to 333.700 to 333.900;

(2) Records of Ppreneed contracts, including financial institution statements and death certificates, shall be maintained by the seller for the duration of the contract and for no less than (2) years after the final disposition of the beneficiary or after the funeral or burial facilities, services or merchandise designated in the contract or cancellation of the contract. (Euler)

INVESTIGATION/INSPECTIONS

333.765.1. The Board shall have authority to:

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(1) Conduct inspections of preneed providers, sellers and counselors preneed sales agent to determine compliance with sections 333.700 to 333.900, at the discretion of the Board and with or without cause;

(2) Investigate the activities of any preneed seller, provider or counselor preneed sales agent for the purpose of determining violations of sections 333.700 to 333.900 or to determine whether grounds exist for disciplining any person licensed or regulated under sections 333.700 to 333.900. The Board shall have authority to conduct an investigation if an inspection authorized by this section identifies a probable violation of sections 333.700 to 333.900 or upon receipt of a complaint filed with the Board or by the Board staff; (Euler)

(3) Conduct a financial examination of the books and records of a licensee, and if necessary an audit of a licensee or any trust or joint account, to determine *if preneed funds are being maintained or handled by the licensee as required by* sections 333.700 to 333.900. The Board shall conduct a financial examination of the books and records of each preneed seller as authorized by this section at least once every **[three/five]** years, as financially permissible pursuant to the funding of the board; (Kutis and Meierhoffer) COMMENT: Conducting a random sampling annually (Solocum). SEE DIFP document.

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

(a) The board shall not appoint or authorize any person to conduct an inspection, investigation, examination or audit pursuant to this section if the individual has a conflict of

interest or is affiliated with the management of, or owns a pecuniary interest in, any person subject to inspection, investigation, examination or audit under section 333.000 to section 333.999.

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

3. Upon request by the board, a licensee or registrant shall make the books and records of the licensee or registrant available to the board for inspection and copying at any reasonable time, including, any insurance, trust, joint account or financial institution records deemed necessary by the board to determine compliance with sections 333.700 to 333.900.

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

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

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

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

8. The state board, the division of finance, the department of insurance, financial institutions and professional registration and the office of the attorney general of Missouri may share information relating to any preneed investigation, examination or audit. (Euler)

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

(1) Declare rights;

(2) Approve a nonjudicial settlement;

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

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

(5) Compel a trustee to report or account;

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

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

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(8) Appoint or remove a trustee;

(10) Determine the liability of a trustee for an action relating to the trust and compel redress of a breach of trust by any available remedy;

(12) Approve employment and compensation of agents;

(13) Determine the propriety of investments or of principal and income allocations, or;

(17) Determine the timing and quantity of distributions and dispositions of assets.

(18) This section does not preclude any other authority vested in the attorney general by law.

DISCIPLINARY ACTION

333.770. 1. The board may refuse to issue any registration or license required by sections 333.700 to 333.900 for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

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

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

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

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

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

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

(6) Violation of, or assisting or enabling any person to violate, any provision of sections 333.700 to 333.900 or sections 333.700 to 333.900, or of any lawful rule or regulation adopted pursuant to Chapters 333, 194 or sections 333.700 to 333.900; (Euler)

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

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

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

(10) Misappropriation or theft of preneed funds; COMMENT: Is this needed? (Euler)

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

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

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

(14) Violation of any professional trust or confidence;

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

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

(1617) Willfully and through undue influence selling a preneed contract, or;

(18) Violating any provision of the Federal Trade Commission's funeral rule. (Solocum)

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

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4. Notwithstanding any other provision of this section, the board may automatically suspend any license issued pursuant to Chapter 333/sections 333.700-333.900 if the board finds, after an inspection, examination, investigation or audit and after providing the licensee an opportunity to respond**,** a shortage in the trust fund or joint account which exceeds [*twenty percent of the amount required to be held in the trust or joint account or fifty thousand dollars, whichever is lesser*] or upon being adjudicated and found guilty, or entering a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense involving elder abuse, violence, sexual misconduct or involving the stealing, misappropriation or theft of funds. (Grinston/Euler)

5. A person whose license was has been suspended under subsection 4 of this section may appeal such suspension to the administrative hearing commission. Notice of such appeal must be received by the administrative hearing commission within ninety days of mailing, by certified mail, the notice of suspension. Failure of a person whose license was suspended to notify the administrative hearing commission of his or her intent to appeal waives all rights to appeal the suspension. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing commission. (Meierhoffer)

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

333.775. If a seller shall fail to make timely payment of an amount due a purchaser, or a provider pursuant to the provisions of sections 333.700 to 333.900, the purchaser or provider, as appropriate, shall have the right, in addition to other rights and remedies against such seller, to make demand upon the trustee of the preneed trust for the contract to distribute to the purchaser

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or provider from the trust, as damages for its breach, an amount equal to all deposits made into the trust for the contract.

333.780. Upon the death or legal incapacity of a purchaser, all rights and remedies granted to the purchaser pursuant to the provisions of sections 333.700 to 333.900 shall be enforceable by and accrue to the benefit of the purchaser's legal representative or his successor designated in such contract, and all payments otherwise payable to the purchaser, other than proceeds payable under a life insurance contract, shall be paid to that person. (HLC Comment – life insurance policies can only be paid out to an assignee or the named beneficiary of the policy.)

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

2. Any violation of the provisions of sections 333.700 to 333.900 shall constitute a violation of the provisions of section 407.020, RSMo. In any proceeding brought by the attorney general for a violation of the provisions of sections 333.700 to 333.900, the court may order all relief and penalties authorized under chapter 407 and, in addition to imposing the penalties provided for in sections 333.700 to 333.900, order the revocation or suspension of the [registration] license of a defendant seller or provider.

INJUNCTIONS

333.790. 1. Upon application by the board, and the necessary burden having been met, a court of general jurisdiction may grant an injunction, restraining order or other order as may be appropriate to enjoin a person from:

(1) Offering to engage or engaging in the performance of any acts or practices for which a registration or authority, permit or license is required by sections 333.700 to 333.900 upon a showing that such acts or practices were performed or offered to be performed without the required registration or authority, permit or license; or

(2) Engaging in any practice or business authorized by a registration or authority, permit or license issued pursuant to sections 333.700 to 333.900 that is in violation of sections 333.700 to 333.900 or upon a showing that the holder presents a substantial probability of serious danger to the health, safety or welfare of any resident of this state or client or customer of the licensee, or;

(3) Engaging in any practice or business that presents a substantial probability of serious danger to the solvency of any preneed seller.

2. Any such action shall be commenced either in the county in which such conduct occurred or in the county in which the defendant resides or, in the case of a firm or corporation, where the firm or corporation maintains its principal office or in Cole county. (Euler

3. Any action brought under this section shall be in addition to and not in lieu of any penalty provided by sections 333.700 to 333.900 and may be brought concurrently with other actions to enforce sections 333.700 to 333.900.

TERMINATION OF BUSINESS- PROVIDER

333.800.1 A preneed provider that intends to sell or otherwise dispose of ***all or a majority*** of its business assets, or its stock if a corporation, shall notify the Board at least sixty

days prior to selling or otherwise disposing of its business assets or stock, or ceasing to do business as a preneed provider, and shall file a notification report on a form established by the board.

2. The report required by this section shall include:

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

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

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

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

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

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

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

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

(a) Within thirty days after the seller receives notification from the provider under this subsection, the seller shall provide written notification to all purchasers with outstanding preneed contracts in which the former provider was designated as provider indicating that the provider

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has transferred ownership or has ceased doing business. Such notice shall give the purchaser the option to select another provider that has a written agreement with the seller pursuant to the provisions of sections 333.000 or to cancel the contract if an alternate provider is not accepted by the purchaser.

(b) If an alternate provider is selected by the purchaser, the seller shall amend the preneed contract to reflect the change in provider and shall notify the new provider of the designation and the new provider shall notify the purchaser that a new assignment of proceeds is required; (HLC Comment – just transferring the preneed contract does not transfer the funding of that contract to another provider.)

(c) If the purchaser elects to cancel the contract, the seller shall refund all amounts paid by or on behalf of the purchaser *and any related interest*. If the purchaser elects to cancel a life insurance funded preneed contract, the consumer must also notify the insurance company in writing of their election to cancel the life insurance policy. If cancelled, the purchaser will only receive the cash surrender value of the life insurance policy. Nothing in this section shall be construed to prohibit a seller from seeking reimbursement from the former provider of any funds paid to the purchaser after a cancellation authorized by this subsection. (HLC Comment – when canceling a preneed contract that is funded by a life insurance policy, the insurance policy itself also has to be cancelled and the purchaser will only receive the cash surrender value of the policy at the time of cancellation.)

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

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

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

TERMINATION OF BUSINESS- SELLER

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

2. The report required by this section shall include:

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

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

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

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

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

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

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

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

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

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

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

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purchaser with any related interest or earnings. If the purchaser does not want to transfer their life insurance funded preneed contract to the new seller, the purchaser may:

(1) Execute a new preneed contract with another provider or seller and reassign the life insurance policy to that provider for funding, however any contract guarantees that were under the old preneed contract will be forfeited by the purchaser; or

(2) The purchaser may cancel the life insurance funded preneed contract. To cancel the life insurance policy the consumer must notify the insurance company in writing of their election to cancel the life insurance policy. The purchaser will only receive the cash surrender value of the life insurance policy..

If the purchaser and seller consent to the transfer, the seller shall amend the preneed contract to reflect the change and shall provide the purchaser with a copy of the amended contract. The purchaser must reassign the funding policy to the new seller/provider to secure the guarantees (if any) under the amended contract.

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

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

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

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

333.830. Upon the death or legal incapacity of a purchaser, all rights and remedies granted to the purchaser pursuant to the provisions of sections 333.700 to 333.900 shall be enforceable by and accrue to the benefit of the purchaser's legal representative or the purchaser's successor designated in such contract, and all payments otherwise payable to the purchaser, other than proceeds payable under a life insurance contract, shall be paid to that person. (HLC Comment – life insurance policies can only be paid out to an assignee or the named beneficiary of the policy.)

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

RULEMAKING

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

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

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

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