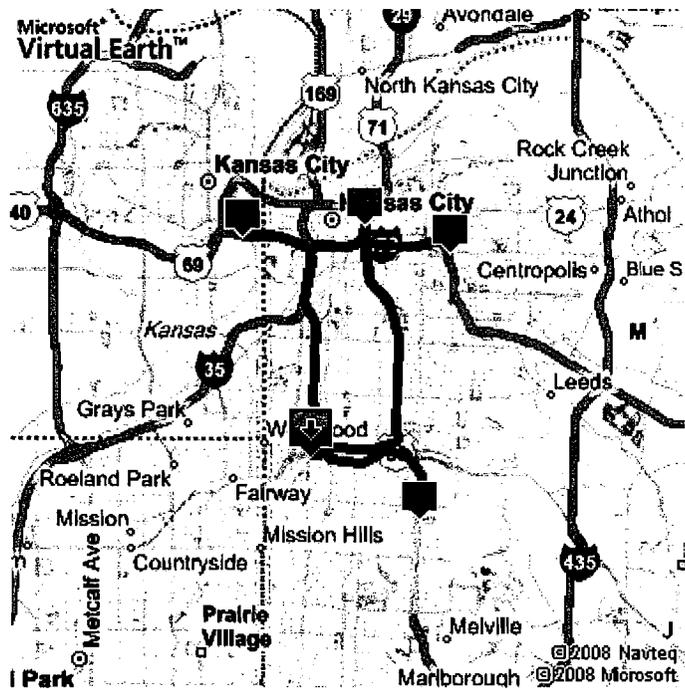


1-click directions to Intercontinental Hotel Kansas City

401 Ward Pkwy, Kansas City, MO (816) 303-2936

Show directions from:

-  [The north \(via George Brett Super Hwy E / I-70 E / US-40 S / US-71\)](#)
-  [The south \(via Bruce R Watkins Dr / US-71 N\)](#)
-  [The east \(via George Brett Super Hwy W / I-70 W / US-40\)](#)
-  [The west \(via Jay B Dillingham Memorial Hwy E / I-70 Alt E / I-670\)](#)
-  [View all](#)



	From the north (via George Brett Super Hwy E / I-70 E / US-40 S / US-71)
1.	Bear right onto US-71 South 3.7 mi
2.	Take ramp right and follow signs for Bruce R Watkins Dr / US-71 0.4 mi
3.	Turn right onto Brush Creek Blvd / Emanuel Cleaver II Blvd 1.4 mi
4.	Keep straight onto US-56 / W 47th St / Emanuel Cleaver II Blvd 0.1 mi
5.	Turn left onto J C Nichols Pkwy 0.2 mi
6.	Turn right onto Ward Pkwy 0.2 mi
7.	Arrive at 401 Ward Pkwy, Kansas City, MO

	From the south (via Bruce R Watkins Dr / US-71 N)
1.	Take ramp right for Swope Parkway / US-56 West toward Brush Creek Blvd 0.2 mi
2.	Bear left onto Swope Pkwy 0.2 mi
3.	Keep straight onto US-56 West / Swope Pkwy 1.6 mi
4.	Turn left onto Ward Pkwy 0.1 mi
5.	Turn left onto J C Nichols Pkwy , and then immediately turn right onto Ward Pkwy 0.3 mi
6.	Arrive at 401 Ward Pkwy, Kansas City, MO

	From the east (via George Brett Super Hwy W / I-70 W / US-40)
1.	Keep left onto I-70 Alt West / I-670 West 1.1 mi
2.	At exit 2T , take ramp right for I-35 South toward Wichita 1.2 mi
3.	At exit 1B , take ramp left for 27th St toward Broadway 0.2 mi
4.	Keep straight onto Penn Valley Dr 0.4 mi
5.	Bear left onto Broadway St 0.8 mi

	From the west (via Jay B Dillingham Memorial Hwy E / I-70 Alt E / I-670)
1.	At exit 2T , take ramp right for I-35 South toward Wichita 1.2 mi
2.	At exit 1B , take ramp left for 27th St toward Broadway 0.2 mi
3.	Keep straight onto Penn Valley Dr 0.4 mi
4.	Bear left onto Broadway St 0.8 mi
5.	Road name changes to Broadway Rd 0.9 mi

Road name changes to Broadway Rd	0.9 mi	Road name changes to J C Nichols Pkwy	0.7 mi
7. Road name changes to J C Nichols Pkwy	0.7 mi	7. Turn right onto Ward Pkwy	0.2 mi
8. Turn right onto Ward Pkwy	0.2 mi	8. Arrive at 401 Ward Pkwy, Kansas City, MO	
9. Arrive at 401 Ward Pkwy, Kansas City, MO			

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Book Online or Call

DRIVING DIRECTIONS

I-70W TO I-35S, EXIT AT SOUTHWEST TRAFICWAY. TAKE A LEFT ONTO ROANOKE PARKWAY, IT WILL BECOME 47TH ST. TURN RIGHT ONTO BROADWAY, STREET TURNS INTO WORNALL RD. HOTEL IS ON THE RIGHT.

[PRINT DIRECTIONS](#) ▶

TRANSPORTATION

Kansas City International (MCI)

Distance 26 MI / 41.84 KM SOUTH to Hotel

Shuttle Charge (one way): \$17.00 (USD)

Taxi Charge (one way): \$45.00 (USD)

Time by taxi: 45 minutes

Take I-29S to I-35 SW to the SW Trafficway. Take SW Trafficway to Roanoke Pkwy & turn left. Roanoke Pkwy veers left & turns into 47th St. Take 47th St to Broadway & turn right. Broadway turns into Wornall Rd. The hotel will be on the immediate right.

Train

Station Name: Amtrak

Distance 2.0 MI / 3.22 KM NORTH to Hotel

DOWNTOWN INFORMATION

KANSAS CITY (1 MI / 1.61 KM)
Country Club Plaza (0 MI / 0 KM)
American Jazz Museum (4 MI / 6.44 KM)
American Royal Center (4 MI / 6.44 KM)
Arrowhead Stadium (10 MI / 16.09 KM)
Crown Center (3 MI / 4.83 KM)
Devry Institute of Technology (14 MI / 22.53 KM)
Economic Development Corp (4 MI / 6.44 KM)
Federal Buildings (EPA FAA SSA USA COE) (4 MI / 6.44 KM)
Kansas City Zoo/Imax Theatre (5 MI / 8.05 KM)
Kauffman Stadium (10 MI / 16.09 KM)
Kemper Arena (4 MI / 6.44 KM)
Nelson Atkins Museum of Art (0.5 MI / 0.8 KM)
Overland Park, Kansas (8 MI / 12.87 KM)
Westport (1 MI / 1.61 KM)
Worlds of Fun (14 MI / 22.53 KM)

OPEN AGENDA
Missouri State Board of Embalmers
and Funeral Directors

December 2-4, 2008
InterContinental Kansas City at the Plaza (Fairmont)
401 Ward Parkway – Pavilion 1
Kansas City, Missouri

Tuesday, December 2, 2008 – 10:00 a.m. – 10:01 a.m.

Call to Order
Roll Call

1. Approval of Agenda

Closed Meeting. The Board will move into closed session pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney.

Tuesday, December 2, 2008 – 11:00 a.m. – OPEN MEETING

Call to Order
Roll Call

2. Approval of Minutes

- **March 11, 2008 Open Mail Ballot Meeting Minutes**
- **April 7-9, 2008 Open Meeting Minutes –INCOMPLETE**
- **April 10, 2008 Open Conference Call Meeting Minutes –INCOMPLETE**
- **April 14, 2008 Open Conference Call Meeting Minutes –INCOMPLETE**
- **April 16, 2008 Open Mail Ballot Meeting Minutes**
- **April 22, 2008 Open Meeting Minutes –INCOMPLETE**
- **April 23, 2008 Open Mail Ballot Meeting Minutes**
- **April 28, 2008 Open Meeting Minutes –INCOMPLETE**
- **May 7, 2008 Open Conference Call Meeting Minutes –INCOMPLETE**
- **May 15, 2008 Open Meeting Minutes –INCOMPLETE**
- **May 29, 2008 Open Mail Ballot Meeting Minutes**
- **June 9, 2008 Open Mail Ballot Meeting Minutes**
- **June 12, 2008 Open Conference Call Meeting Minutes –INCOMPLETE**
- **June 19, 2008 Open Mail Ballot Meeting Minutes**
- **July 8, 2008 Open Chapter 436 Review Committee Meeting Minutes**
- **July 15, 2008 Open Chapter 436 Review Committee Meeting Minutes**
- **July 24, 2008 Open Chapter 436 Review Committee Meeting Minutes**

- July 29, 2008 Open Chapter 436 Review Committee Meeting Minutes
- August 12, 2008 Open Chapter 436 Review Committee Meeting Minutes
- August 18-20, 2008 Open Meeting Minutes - INCOMPLETE
- August 26, 2008 Open Conference Call Meeting Minutes
- September 4, 2008 Open Meeting Minutes
- September 8, 2008 Open Conference Call Meeting Minutes
- September 23, 2008 Open Mail Ballot Meeting Minutes
- October 14, 2008 Open Mail Ballot Meeting Minutes

3. Executive Director's Report

4. Legal Counsel Report (Kim Grinston)

5. Rules and Regulations

- New

6. Annual Reporting Notice – Preneed Providers and Sellers

7. Embalmer/Funeral Director Renewal Update

8. Tax Compliance

9. DNR Letter

10. Future Meeting Dates

- March/April 2009/Festus, Missouri

11. Chapter 436 Review Committee Update

Closed Meeting. The Board will move into closed session at 12:00 p.m. pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney.

Tuesday, December 2, 2008 – 1:00 p.m. – OPEN MEETING

Call to Order

Roll Call

12. 1:00 p.m.- Deputy Receiver Donna Garrett/Guarantee Association Chuck Renn

Conference Call has been set up for this portion of the meeting by the Deputy Receiver for the public wishing to join discussion at 1:00 p.m.

Dial 800-467-2166 Passcode: 494821# (Be sure to enter the # sign at end of passcode)

**13. Open Discussion – Dialogue with General Public Attending Open Session
Continuation and/or Completion of any Unfinished Open Session Business**

**State Board of Embalmers and Funeral Directors will recess
during Joint Committee Meeting and may resume open session**

Closed Meeting. The Board may move into closed session pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 620.010.14 Subsection (8) for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 620.010.14 Subsection (5) RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings.

Wednesday, December 3, 2008 – 9:00 a.m.

CLOSED MEETING

Call to Order

Roll Call

Thursday, December 4, 2008 – 9:00 a.m.

CLOSED MEETING

Call to Order

Roll Call

Adjournment

Open Minutes
Missouri State Board of Embalmers
and Funeral Directors
March 11, 2008
3605 Missouri Boulevard, Suite 370
Jefferson City, Missouri

MAIL BALLOT

Board Members

James Reinhard, Chairman
Marcia Shadel, Vice-Chairperson
Martin Vernon, Secretary
Gary Fraker, Member
Daniel T. Mahn, Member
Joy Gerstein, Public Member

Closed Session

The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure.

Executive Director _____

Approved by Board on _____

Open Minutes
Missouri State Board of Embalmers
and Funeral Directors
April 16, 2008
3605 Missouri Boulevard, Suite 370
Jefferson City, Missouri

MAIL BALLOT

Board Members

James Reinhard, Chairman
Martin Vernon, Vice-Chairman
Gary Fraker, Secretary
Daniel T. Mahn, Member
Joy Gerstein, Public Member

Chapter 436 Legislation Proposal

Should this language be removed from the current 436 legislative recommendations of the board? Yes/No/Other

(6) Only authorize the sale of preneed contracts by a funeral director or any person serving a funeral director apprenticeship pursuant to section 333.042, provided that a funeral director or funeral director apprentice shall not be required if the preneed contract only includes the sale of funeral merchandise.

Vote before the board at this time is as follows:

- Yes
- No
- Other

Votes are as follows:

Martin Vernon and Gary Fraker voted "YES".
Todd Mahn voted "NO".

This was email to the State Board of Embalmers and Funeral Directors Public Agenda Listing. Members of the public wishing to provide comments were asked to submit suggestions to the board office via fax or email. The board received a fax from John Moore, Moore Funeral Home – voting "NO".

Executive Director _____

Approved by Board on _____

Open Minutes
Missouri State Board of Embalmers
and Funeral Directors
April 23, 2008
3605 Missouri Boulevard, Suite 370
Jefferson City, Missouri

MAIL BALLOT

Board Members

James Reinhard, Chairman
Martin Vernon, Vice-Chairman
Gary Fraker, Secretary
Daniel T. Mahn, Member
Joy Gerstein, Public Member

Closed Session

The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure.

Executive Director _____

Approved by Board on _____

Open Minutes
Missouri State Board of Embalmers
and Funeral Directors
May 29, 2008
3605 Missouri Boulevard, Suite 370
Jefferson City, Missouri

MAIL BALLOT

Board Members

James Reinhard, Chairman
Martin Vernon, Vice-Chairman
Gary Fraker, Secretary
Daniel T. Mahn, Member
John McCulloch, Member
Joy Gerstein, Public Member

Closed Session

The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure.

Executive Director _____

Approved by Board on _____

Open Minutes
Missouri State Board of Embalmers
and Funeral Directors
June 9, 2008
3605 Missouri Boulevard, Suite 370
Jefferson City, Missouri

MAIL BALLOT

Board Members

James Reinhard, Chairman
Martin Vernon, Vice-Chairman
Gary Fraker, Secretary
Daniel T. Mahn, Member
John McCulloch, Member
Joy Gerstein, Public Member

Closed Session

The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure.

Executive Director _____

Approved by Board on _____

Open Minutes
Missouri State Board of Embalmers
and Funeral Directors
June 19, 2008
3605 Missouri Boulevard, Suite 370
Jefferson City, Missouri

MAIL BALLOT

Board Members

James Reinhard, Chairman
Martin Vernon, Vice-Chairman
Gary Fraker, Secretary
Daniel T. Mahn, Member
John McCulloch, Member
Joy Gerstein, Public Member

Closed Session

The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney.

Executive Director _____

Approved by Board on _____

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors
Chapter 436 Review Committee

July 8, 2008
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

July 8, 2008
Missouri Council of School Administrators
3550 Amazonas Drive (lower level)
Jefferson City, Missouri

Tuesday, July 8, 2008 – 8:00 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors, was called to order by James Reinhard, Chairman, at 8:15 a.m. on Tuesday, July 8, 2008, at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

Board Members Present

James Reinhard, Chairman
Martin Vernon, Vice-President
Gary Fraker, Secretary
Daniel (Todd) Mahn, Member
John McCulloch, Member
Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Kimberly Grinston, Board's Legal Counsel
David Broeker, Director of Division of Professional Registration
Connie Clarkston, Director of Budget & Legislation

Closed Meeting

Motion was made by Todd Mahn and seconded by Gary Fraker to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, and John McCulloch voting in favor with no votes in opposition. Joy Gerstein was absent for this portion of the meeting.

July 8, 2008 – 9:30 a.m.

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, was called to order by James Reinhard, Chairman, at 9:45 a.m., at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

COMMITTEE REGULATORS

Linda Bohrer, Acting Director-Department of Insurance, Financial Institutions and Professional Registration ("DIFP")

David Broeker, Director, Division of Professional Registration*

Sharon Euler, Office of the Attorney General*

ABSENT - Mary Erickson, Senior Enforcement Counsel- DIFP

Larry McCord, General Counsel- DIFP

ABSENT - Mark Stahlhuth, Senior Counsel- Financial Section, DIFP

Rich Weaver, Deputy Commissioner, Division of Finance

ADDITIONAL COMMITTEE PARTICIPANTS

James Reinhard, Chairman, State Board of Embalmers and Funeral Directors

Martin Vernon, Vice Chairman, State Board of Embalmers and Funeral Directors

Gary Fraker, Secretary, State Board of Embalmers and Funeral Directors

Joy Gerstein, Public Member, State Board of Embalmers and Funeral Directors

Todd Mahn, Member, State Board of Embalmers and Funeral Directors

John McCulloch, Member, State Board of Embalmers and Funeral Directors
and American Prearranged Services

Bob Baker, Wright Baker Hill Funeral Home

ABSENT - Barbara Brown, Layne Renaissance Chapel, LLC

Norma Collins, AARP

ABSENT - Tom Kutis, Kutis Funeral Home, Inc.

George Cline, Kutis Funeral Home, Inc.

Jim Moody, Lobbyist, SCI

Representative Timothy Meadows

ABSENT - Barbara Newman, Representative Meadows' Office

Michael Meierhoffer, Meierhoffer Funeral Home & Crematory, Inc.

Darlene Russell, CFL Preneed

ABSENT - Josh Slocum, Executive Director, Funeral Consumer Alliance

Bill Stalter, Stalter Legal Services

ABSENT - Bill Trimm, Silver Haired Legislature

Jo Walker, Silver Haired Legislature

Don Otto, Executive Director, Missouri Funeral Directors and Embalmers
Association/Missouri Funeral Trust

Mark Warren, English & Monaco- Representing the Missouri Preneed Insurers Coalition of six
(6) life insurers with interests in the Missouri preneed market, including
Forethought Life Insurance Company, Funeral Directors Life, Great Western,

* Did not participate as a voting member of the Working Group. Due to pending litigation, the Missouri Attorney General's Office also refrained from voting, however, the Attorney General's Office assisted in Working Group discussions.

Homesteaders Life, National Guardian Life Insurance Company, and Pekin Life.

Mike Winters, Lobbyist, American Prearranged Services

COMMITTEE SUPPORT STAFF

Connie Clarkston, Director of Budget & Legislation, Division of Professional Registration*

Becky Dunn, Executive Director, State Board*

Darcie Rehagen, Division of Professional Registration*

Kimberly Grinston, Legal Counsel, Division of Professional Registration*

Lori Hayes, Inspector, State Board*

*Will not participate as a voting member of the Chapter 436 Review Committee Working Group. Due to pending litigation, the Missouri Attorney General's Office will also refrain from voting, however, the Attorney General's Office will assist in Working Group discussions.

Visitors Present:

Richard Brownlee, Hendren Andrea LLC

Marian Hutchings, Hutchings Funeral Chapel

Vickie Seiler, Hutchings Funeral Chapel

James Miller, Reser Funeral Home

Kalene Summerville, Summerville & Patton Funeral Home

Chris Follis, Follis & Sons Funeral Home

Steve Watkins, Watkins & Sons Funeral Home

Chris Moody, Moody & Associates, SCI

Tim Scott, Hedges-Scott Funeral Home

Bill Bennett, Britton Bennett Funeral Home

Larry Stroud, MFDEA President

Brad Speaks, Speaks Family Legacy Chapels

Bob Speaks, Speaks Family Legacy Chapels

Jeff Stygar, Stygar Funeral Homes

Brian May, Chapel Hill Mortuary & Memorial Gardens

Sarah Madden, Attorney General's Office

Deanna Borland, Mike Winter Consultants

During the 2008-2009 legislative session, several legislative proposals were introduced to significantly revise and amend Chapter 436 governing preneed sales in the state of Missouri. Although the majority of proposals were not enacted, Senate Bill 788 was passed by the General Assembly which created the Joint Committee on Preneed Funeral Contracts.

After the close of the legislative session, Senator Delbert Scott and Representative Jay Wasson met with several of the legislative participants to discuss the unresolved Chapter 436 concerns. The discussion revealed several common areas of agreement among regulators, industry representatives and consumer groups. The Board was subsequently asked to formulate a working group to help identify those collective areas of agreement and to collate suggested legislative recommendations for the Joint Committee's review.

The Working Group consists of representatives from all aspects of the preneed industry, including, preneed providers/sellers, consumer groups, the Missouri Funeral Directors and Embalmers Association, related insurance companies and representatives from small, large and minority funeral establishments. Participants were chosen from prior legislative involvement and from recommendations made by legislators, Board members and related consumer groups. Public participation is welcome and will also be afforded an opportunity to provide both oral and written comments.

To guide the review, the State Board of Embalmers and Funeral Directors formulated a survey containing a listing by topic area of Chapter 436 proposals previously submitted to the board. Participants were asked to rank the priority of topic areas for purposes of discussion. Rankings were subsequently compiled by the Division and used to structure Working Group discussions.

**MISSOURI STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS
PRENEED SURVEY RESULTS**

HIGHEST PRIORITY

19. Addressing preneed provider obligations on default by the seller [61]
26. **Depositing of preneed funds** [66]
30. Changing/clarifying amount of preneed funds required to be trusted (100%, 80%, etc.) [64]
33. Clarifying whether trust accounts are required for all preneed sellers [62]
34. Changing/clarifying trustee duties/responsibilities [61]
35. Changing/clarifying allowed use of independent investment advisors [60]
39. Proper investment of trust funds (term life, whole life, "reasonable person" standard) [63]
47. Changing/clarifying trust requirements for preneed sellers issuing insurance funded preneed contracts [62]
48. Changing/clarifying regulation of preneed sellers selling insurance funded preneed plans only (should this go to the Bd. Or the Department of Insurance?) [63]

SIGNIFICANT PRIORITY

4. Changing/clarifying the Board's audit authority (i.e.- allowing random/regularly scheduled audits) [56]
5. Changing a preneed "registration" to a preneed "license" [50]
6. Registering/licensing of individuals selling on behalf of preneed sellers [51]
7. Clarifying/changing preneed requirements for cemeteries [51]
11. Changing/clarifying preneed provider/seller annual report requirements [50]
12. Changing/clarifying information reported by preneed providers/sellers to the Bd. [51]
13. Changing/clarifying provider/seller reporting requirements to third parties (i.e.- reporting to consumers/sellers) [53]
14. **Allowing/prohibiting third party sellers** [58]
20. Changing/clarifying portability requirements (changing providers or transferring to another seller) [55]
22. Adopting/requiring standard forms for preneed contracts [50]

24. Changing/clarifying provisions for cancelling preneed contracts [51]
27. Prohibiting or adopting standards for the collections of funds by preneed providers [52]
28. Changing/clarifying record keeping for preneed payments [51]
31. Changing/clarifying preneed refund provisions [53]
36. Changing/clarifying trustee reporting/notification requirements (i.e.- trustee reports to the Bd., consumers sellers, providers, the AG, etc.) [53]
37. Record keeping requirements for trustees [52]
38. Changing/clarifying permitted trust disbursements [57]
43. "Rollover"/transfer of trust funds [52]
44. Notification of trust changes/transfers (i.e.- notification to the Bd., sellers, consumers, etc.) [53]
- 45. Allocation of preneed interest [58]**
46. Prohibiting/restricting insurance funded preneed plans [50]
49. Addressing/clarifying cancellation of insurance funded preneed plans [52]
50. Portability of insurance funded preneed plans (transferring providers/insurers/sellers) [56]
59. Expanding/modifying criminal/civil authority of the Attorney General's Office [50]
63. Changing/clarifying requirements for cancellation of joint account contracts [53]
64. Amending/modifying refund requirements for preneed funds held in joint accounts [50]
65. Portability of joint accounts [50]
67. Allowing/modifying auditing or examination of joint accounts [50]

MODERATE PRIORITY

1. Transferring Chapter 436 regulatory authority to another agency (i.e.- insurance, finance, the Attorney General's Office) [44]
2. Transferring auditing functions only to another agency (i.e.- insurance, the Attorney General's Office) [45]
3. Rulemaking authority for the Board [44]
8. Addressing preneed provider/seller fees [46]
10. Late fees for late annual report filings [43]
15. Requiring all preneed providers to be funeral establishments [41]
17. Allowing insurance funded preneed plans only [40]
18. Restricting preneed sales by to insurance agents only [41]
21. Changing/clarifying basic requirements for preneed contracts [45]
23. Requiring the filing or approval of preneed forms & contracts with/by the Bd or other agency [47]
25. Changing/clarifying record keeping requirements for preneed providers/sellers (i.e.- what and how long records have to be maintained) [48]
- 29. Adopting/requiring notification to consumers of preneed fund payments, deposits, interest or about account statements [49]**
- 40. Location of trustees/trust accounts (Does the trust/trustee have to be in Missouri?) [49.5]**
41. Location of trust records [47]
- 42. Commingling of trust funds [49]**
51. Changing/clarifying the Board's current investigative/examination/audit process [43]
52. Modifying the Board's current disciplinary authority (Should it be limited/expanded?) [48]
53. Allowing/modifying release of complaint information to the public [47]
54. Allowing/modifying release of complaint information to providers/sellers with contractual relationships [46]

- 55. Allowing civil penalties/fines for 436 violations [42]
- 56. Assessment of audit/examination/investigation fees [43]
- 57. **Allowing the Board to hire legal counsel [49]**
- 58. **Expanding/modifying investigative, audit or examination powers of the Attorney General's Office [49]**
- 60. Allowing or prohibiting the use of joint accounts [44]
- 61. Changing/clarifying reporting requirements for joint account holders [47]
- 62. Amending consumer notification requirements for joint account contracts [45]
- 66. Trust requirements for entities with joint accounts [48]

LOW PRIORITY

- 9. **Granting Board authority to set fees [39]**
- 16. Requiring bonding/insurance for preneed providers/sellers [31]
- 32. Changing/clarifying requirements for payments to providers for at-need services (time periods, recordkeeping, amount, etc.) [35]

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, will be discussing the following general topics during this meeting. The Board has scheduled additional meetings on July 15th, July 24nd, July 29th and August 12 to address additional concerns.

Becky;
Is motions like this necessary for this review meeting??????

Approval of Agenda

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

Discussion will be reasonably limited to the topics identified below. The topics listed below are not suggestions of the Board. These are general topics/suggestions that have been presented to the board prior to the Chapter 436 meetings/discussions. Discussion will not be summarized in the minutes. A copy of the open meeting transcription will be maintained as a part of the meeting minutes. The Chapter 436 Review Committee will take all public suggestions and proposals under review and consideration before or at the next Chapter 436 Review Committee Meeting.

A. CHAPTER 436 LEGISLATIVE DISCUSSION:

GENERAL ADMINISTRATION:

TOPIC
1. Transferring Chapter 436 regulatory authority to another agency (i.e.- Insurance, Finance, the Attorney General's Office, etc.)

- | |
|--|
| 2. Transferring auditing functions <u>only</u> to another agency (i.e.- Insurance, Finance, the Attorney General's Office, etc.) |
|--|

PRENEED SELLER ISSUES

TOPIC
3. Allowing/prohibiting third party sellers
4. Allowing insurance funded preneed plans only
5. Restricting preneed sales to insurance agents only
6. Requiring bonding/insurance for preneed sellers

INSURANCE ISSUES

TOPIC
7. Allowed use of insurance funded preneed plans (Including what type of insurance plans may be used)
8. Changing/clarifying regulation of preneed sellers selling insurance funded preneed plans only (Should this go to the Bd. or the Department of Insurance?)

PRENEED PROVIDER ISSUES

TOPIC
9. Clarifying who can be licensed as a preneed provider (i.e.- must all preneed providers be licensed funeral establishments)
10. Requiring bonding/insurance for preneed providers

LICENSING/REGISTRATIONS

TOPIC
11. Changing a preneed "registration" to a preneed "license"
12. Registering/licensing of individuals selling on behalf of preneed sellers
13. Licensing requirements for preneed registrants
14. Clarifying/changing preneed registration or licensing requirements for cemeteries
15. Clarifying whether trust accounts are required for all preneed sellers

JOINT ACCOUNTS

TOPIC
16. Clarifying/amending persons authorized to use joint accounts (i.e.- should they be allowed for providers, sellers or both)

HANDLING OF PRENEED CONTRACTS

TOPIC
17. Changing/clarifying basic requirements for preneed contracts

18. Adopting/requiring standard forms for preneed contracts
19. Requiring the filing or approval of preneed forms & contracts with/by the Bd. or other agency
20. Definition of a "preneed contract"

COMPLAINTS/DISCIPLINE

TOPIC
21. Changing/clarifying the current Chapter 436 investigative/examination/audit process
22. Modifying the current disciplinary authority (Should it be limited/expanded?)
23. Allowing/modifying release of complaint information to the public
24. Allowing/modifying release of complaint information to providers/sellers with contractual relationships
25. Allowing civil penalties/fines for Chapter 436 violations
26. Allowing the regulatory agency for Chapter 436 to hire legal counsel
27. Expanding/modifying investigative, audit or examination powers of the Board/Attorney General's Office/Missouri Department of Insurance, etc.
28. Expanding/modifying criminal/civil authority of the Board/Insurance/Attorney General's Office

B. GENERAL DISCUSSION:

- Summary and general overview of trusting requirements for preneed funds from other states
- Summary and general overview of preneed refund requirements from other states (on cancellation, default, transfer, etc.)

David Broeker, Director, Division of Professional Registration

- As you are all aware, the funeral preneed industry has recently been a topic of discussion across the country and in the State of Missouri.
- The preneed industry and Chapter 436 has also been a concern for the Board of Embalmers and Funeral Directors for several years.
- At the end of last legislative session, SB 788 was passed which established the "Joint Committee on Preneed Funeral Contracts". The Joint Committee will consist of 14 members- 7 from the House and 7 from the Senate.
- It is our understanding that the goal of the Joint Committee will be to review some of the preneed concerns and to look at whether legislative changes are necessary.
- In a recent meeting, Sen. Scott and Rep. Wasson invited individuals from different aspects of the preneed industry to review Chapter 436 and to help identify areas in Chapter 436 where change may be needed. It is our understanding that these suggestions will be presented to the Joint Committee to review when the Joint Committee convenes after August 28th.
- The Board of Embalmers and Funeral Directors was asked to take the lead on this task.

- Specifically, the Board was asked to assist in organizing a meeting with representatives from the various sectors of the preneed industry, including, consumer groups, representatives from insurance, funeral directors, preneed sellers and the various regulators.
 - The goal today and through these meetings is to: (1) identify areas of common agreement and (2) formulate some suggested language for the Joint Committee to review.
 - This is an unprecedented opportunity for all of the preneed industry to come together with state regulators to provide some suggestions for the Joint Committee to review.
 - From my many years in state government, an opportunity like this doesn't present itself every session. We want to thank Sen. Scott and Rep. Wasson for their invitation and for allowing the Board to assist with this process.
 - This is really an opportunity for all of you to have a positive impact on an issue that affects a lot of people.
 - As with anything, I am sure you are not going to be able to agree on absolutely everything.
 - However, I would encourage you to take advantage of this truly rare opportunity and to make a good faith attempt to provide some strong guidance for the Joint Committee and perhaps the General Assembly.
 - Quite frankly, it appears that a preneed proposal will most likely be introduced this session either with or without this group's participation.
 - Of course, it would be good, and we would prefer, for this to happen with all of your participation.
 - We have some aggressive timeframes. Cooperation will be the key to getting this done.
 - We have no idea what will happen with the legislative process after you finish meeting and develop your suggestions.
 - There are no guarantees that what this group develops will actually be enacted by the General Assembly.
 - However, by working together, you'll at least have a chance to provide some suggestions from the people who are actually going to be affected by any change to Chapter 436.
 - Also, you'll have this opportunity to at least present something for the Joint Committee to actually review in its work.
- Again, I encourage you all to work together. Thank you for your time and for being willing to participate in this process.

Connie Clarkston, Director of Budget & Legislation, Division of Professional Registration

- On behalf of Sen. Delbert Scott and Rep. Jay Wasson, I would like to thank those of you on the review committee as well all who are observing today for your participation in this process.
- As David has stated, we have been given a unique opportunity to provide input to the Joint Committee.
- During the 2008 legislative session, two House bills were introduced to address changes in Chapter 436.
- As part of the legislative process, the Division of Professional Registration receives a copy of each bill pertaining to the division and any of its boards. The bills are sent for review of

fiscal impact. At the same time the division request that each bill be reviewed for impact to the board and its profession.

- The division is often asked by various members of the General Assembly to provide input regarding the intent as well as the language of a bill.
- The 2 bills introduced I mentioned earlier in 2008 were handled in this manner.
- The Board of Embalmers and Funeral Directors review HB2469 (Rep. Kuessner) and HB2594 (Rep. Meadows)
- The Board of Embalmers and Funeral Directors began review of the legislation at their April 7, 2009 meeting. Due to the gravity of the preneed issues, the board held additional meetings to gather input from the industry.
- A draft was presented to Sen. Scott and Rep. Wasson in early April. From that draft, the board was requested to provide a list of 5 priorities in hopes that something could be passed prior to session ending.
- The magnitude of this issue brought much attention and concern to the General Assembly and the Joint Legislative Committee was established in SB788. As of today, that bill is awaiting the Governor's signature.
- The bill specifically requires the Joint Committee to disband on January 31, 2008. In order to facilitate efforts, Sen. Scott called various state regulators and members of the funeral industry to a meeting. The meeting focused on bringing forth issues from all aspects of Chapter 436.
- Again, during that meeting the division and board were asked to assist facilitate the Joint Committee by bringing forth areas of common ground and those areas needing additional input.
- It is important to understand that the document that comes from this meeting will not be the board's proposal. It will merely represent the consensus of the Review Committee. However, the board, like any group represented here, will have the opportunity to take a full board vote on the proposal at the conclusion of the Review Committee meetings. That vote in turn, will be shared with the Joint Legislative Committee. We would encourage your specific group to do the same.
- Given the short timeframes in which we will be working we will be operating under the following format:
 - A topic will be introduced
 - Relevant background information will be provided
 - Committee member dialogue will be held
 - Committee members will be recognized by the chair to speak. In order to facilitate participation you will find a colored card at your seat. We ask that you place the card next to your name plaque for the chair to recognize you.
 - Once the committee dialogue is completed, public comments will be received. We are establishing a 15 minute limit for each topic and ask that each person limit individual comments to 2 minutes a piece.
 - Because we have a court report present, we ask that prior to addressing your comment, that you provide your name and who you are representing. Please speak clearly and wait for the court report to acknowledge your communication.
 - A timekeeper will announce time at the end of the 2 minutes and the next individual will be recognized by the chair to speak.

- If time does not allow you to provide your specific comment, a comment sheet is available for you to use.
- At the end the discussion for each topic we will take a vote for the consensus of the group.
- Kim and I will draft language and will share the review draft after the 3rd meeting.
- We will also provide a document which includes the issues of commonly agreed upon and those that are unsettled.
- The last meeting of the Review Committee will be utilized to review the final draft documents to be submitted to the Joint Legislative Committee.
- If at any point you would like to submit a comment after a vote has been taken by the review committee, whether you are member or not, we ask that the comment be submitted on the Comment Sheet.
- Electronic comments can be submitted; however, we ask that those come to my email address only. Please do not send any comments to the board office. My email address is on the Comment Sheet.

Again, we thank your time and participation and appreciate your cooperation as we move through this process.

Closed Meeting

Motion was made by Todd Mahn and seconded by Gary Fraker to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; and Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, and John McCulloch voting in favor with no votes in opposition. Joy Gerstein was absent for this portion of the meeting.

Recess

The board recessed for a Closed Meeting working lunch at 12:00 p.m. and reconvened at 1:30 p.m.

12:15 p.m. – 1:30 p.m. – Closed Meeting

**Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri**

1:30 p.m. - 5:30 p.m. – Open Meeting

**Missouri Council of School Administrators
3550 Amazonas Drive (lower level)
Jefferson City, MO 65109**

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, returned to open session. The open meeting was called to order by James Reinhard, Chairman, at 1:30 p.m., at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

Chapter 436 Review discussion continued throughout the meeting.

Adjournment

A motion was made by Martin Vernon and seconded by John McCulloch to adjourn. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch and Joy Gerstein voting in favor with no votes in opposition. The meeting adjourned at 4:30 p.m. on Tuesday, July 8, 2008.

Executive Director: _____

Approved by the Board on: _____

DRAFT

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors
Chapter 436 Review Committee

July 15, 2008
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

July 15, 2008
Missouri Council of School Administrators
3550 Amazonas Drive (lower level)
Jefferson City, Missouri

Tuesday, July 15, 2008 – 8:30 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors, was called to order by James Reinhard, Chairman, at 8:50 a.m. on Tuesday, July 15, 2008, at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

Board Members Present

James Reinhard, Chairman
Gary Fraker, Secretary
Daniel (Todd) Mahn, Member
John McCulloch, Member
Joy Gerstein, Public Member

Board Members Absent

Martin Vernon, Vice-President

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Kimberly Grinston, Board's Legal Counsel
David Broeker, Director of Division of Professional Registration
Connie Clarkston, Director of Budget & Legislation
Jeana Groose, Division of Professional Registration

Closed Meeting

Motion was made by Joy Gerstein and seconded by Gary Fraker to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition. Martin Vernon was absent from the entire meeting.

July 15, 2008 – 9:30 a.m.

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, was called to order by James Reinhard, Chairman, at 9:40 a.m., at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

COMMITTEE REGULATORS

ABSENT - Linda Bohrer, Acting Director-Department of Insurance, Financial Institutions and Professional Registration ("DIFP")

David Broeker, Director, Division of Professional Registration*

Sharon Euler, Office of the Attorney General*

Mary Erickson, Senior Enforcement Counsel- DIFP

Larry McCord, General Counsel- DIFP

Mark Stahlhuth, Senior Counsel- Financial Section, DIFP

Rich Weaver, Deputy Commissioner, Division of Finance

ADDITIONAL COMMITTEE PARTICIPANTS

James Reinhard, Chairman, State Board of Embalmers and Funeral Directors

ABSENT - Martin Vernon, Vice Chairman, State Board of Embalmers and Funeral Directors

Gary Fraker, Secretary, State Board of Embalmers and Funeral Directors

Joy Gerstein, Public Member, State Board of Embalmers and Funeral Directors

Todd Mahn, Member, State Board of Embalmers and Funeral Directors

John McCulloch, Member, State Board of Embalmers and Funeral Directors
and American Prearranged Services

Bob Baker, Wright Baker Hill Funeral Home

Barbara Brown, Layne Renaissance Chapel, LLC

ABSENT - Norma Collins, AARP

ABSENT - Tom Kutis, Kutis Funeral Home, Inc.

George Cline, Kutis Funeral Home, Inc.

Jim Moody, Lobbyist, SCI

ABSENT - Representative Timothy Meadows

ABSENT - Barbara Newman, Representative Meadows' Office

Michael Meierhoffer, Meierhoffer Funeral Home & Crematory, Inc.

Darlene Russell, CFL Preneed

ABSENT - Josh Slocum, Executive Director, Funeral Consumer Alliance

Bill Stalter, Stalter Legal Services

Bill Trimm, Silver Haired Legislature

ABSENT - Jo Walker, Silver Haired Legislature

Don Otto, Executive Director, Missouri Funeral Directors and Embalmers
Association/Missouri Funeral Trust

Mark Warren, English & Monaco- Representing the Missouri Preneed Insurers Coalition of six
(6) life insurers with interests in the Missouri preneed market, including
Forethought Life Insurance Company, Funeral Directors Life, Great Western,

* Did not participate as a voting member of the Working Group. Due to pending litigation, the Missouri Attorney General's Office also refrained from voting, however, the Attorney General's Office assisted in Working Group discussions.

Homesteaders Life, National Guardian Life Insurance Company, and Pekin Life.

ABSENT - Mike Winters, Lobbyist, American Prearranged Services

COMMITTEE SUPPORT STAFF

Connie Clarkston, Director of Budget & Legislation, Division of Professional Registration*
Becky Dunn, Executive Director, State Board*
Jeana Groose, Division of Professional Registration*
Kimberly Grinston, Legal Counsel, Division of Professional Registration*
Lori Hayes, Inspector, State Board*

*Will not participate as a voting member of the Chapter 436 Review Committee Working Group. Due to pending litigation, the Missouri Attorney General's Office will also refrain from voting, however, the Attorney General's Office will assist in Working Group discussions.

Visitors Present:

Deanna Borland, Mike Winter Consultants
Kalene Summerville, Summerville & Patton Funeral Home
Brad Speaks, Speaks Family Legacy Chapels
Sarah Madden, Attorney General's Office
John Perkins
Gerry Kraus, Homesteaders Life Company
Chris Roth, Bopp Chapel, MFDEA
Rodney Gray, Hendren Andrae, LLC
Tom Reichards, Office of Endowed Care Cemeteries/Professional Registration
Dennis Kelly, Austin Layne Mortuary

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, will be discussing the following topics listed, along with the topics listed for the July 8, 2008 not completed. The board has scheduled additional meetings on July 24nd, July 29th and August 12 to address additional concerns.

Approval of Agenda

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

Discussion will be reasonably limited to the topics identified below. The topics listed below are not suggestions of the Board. These are general topics/suggestions that have been presented to the board prior to the Chapter 436 meetings/discussions. Discussion will not be summarized in the minutes. A copy of the open meeting transcription will be maintained as a part of the meeting minutes. The Chapter 436 Review Committee will take all public suggestions and proposals under review and consideration before or at the next Chapter 436 Review Committee Meeting.

JULY 15TH
PROPOSED OPEN AGENDA

A. 436 Discussion

PRENEED FUNDS

TOPIC
1. Depositing of preneed funds (when funds are deposited)
2. Collections of funds by preneed providers
3. Record keeping for preneed fund payments
4. Notification to consumers of preneed fund payments, deposits, interest or account statements
5. Amount of funds required to be trusted (100%, 80%, etc.)
6. Refund of preneed funds
7. Amount of funds retained by seller/provider
8. Payments to providers for services rendered (time periods, recordkeeping, amount, etc.)

TRUST ISSUES:

TOPIC
9. Trustee duties/responsibilities
10. Independent investment advisors (prohibiting or restricting IIAs, requirements for selection, clarifying use/duties)
11. Reporting/notification requirements for trustees (reporting/notification to the Bd., consumers sellers, providers, the AG, etc.)
12. Record keeping for trustees
13. Trust disbursements
14. Investment of trust funds (term life, whole life, "reasonable person" standard)
15. Location of trustees/trust accounts (Does the trust/trustee have to be in Missouri?)
16. Location of trust records (Where should records be kept)
17. Commingling of trust funds
18. "Rollover"/transfer of trust funds
19. Notification of trust changes/transfers (i.e.- notification to the Bd., sellers, consumers, etc.)
20. Allocation of preneed interest

HANDLING OF PRENEED CONTRACTS

TOPIC
21. Portability (changing providers or transferring to another seller)

OPEN AGENDA JULY 8, 2008
(HIGHLIGHTED ITEMS IDENTIFIED AS COMPLETED.)

Items not highlighted will be discussed today OR future meeting date.)

A. CHAPTER 436 LEGISLATIVE DISCUSSION:

GENERAL ADMINISTRATION:

TOPIC
1. Transferring Chapter 436 regulatory authority to another agency (i.e.- Insurance, Finance, the Attorney General's Office, etc.) COMPLETED
2. Transferring auditing functions <u>only</u> to another agency (i.e.- Insurance, Finance, the Attorney General's Office, etc.) COMPLETED

PRENEED SELLER ISSUES

TOPIC
3. Allowing/prohibiting third party sellers COMPLETED
4. Allowing insurance funded preneed plans <u>only</u> COMPLETED
5. Restricting preneed sales to insurance agents <u>only</u> COMPLETED
6. Requiring bonding/insurance for preneed sellers

INSURANCE ISSUES

TOPIC
7. Allowed use of insurance funded preneed plans (Including what type of insurance plans may be used)
8. Changing/clarifying regulation of preneed sellers selling insurance funded preneed plans <u>only</u> (Should this go to the Bd. or the Department of Insurance?) COMPLETED

PRENEED PROVIDER ISSUES

TOPIC
9. Clarifying who can be licensed as a preneed provider (i.e.- must all preneed providers be licensed funeral establishments) COMPLETED
10. Requiring bonding/insurance for preneed providers

LICENSING/REGISTRATIONS:

TOPIC
11. Changing a preneed "registration" to a preneed "license" COMPLETED
12. Registering/licensing of individuals selling on behalf of preneed sellers COMPLETED
13. Licensing requirements for preneed registrants
14. Clarifying/changing preneed registration or licensing requirements for cemeteries
15. Clarifying whether trust accounts are required for all preneed sellers COMPLETED

JOINT ACCOUNTS

TOPIC
16. Clarifying/amending persons authorized to use joint accounts (i.e. - should they be allowed for providers, sellers or both) COMPLETED

HANDLING OF PRENEED CONTRACTS

TOPIC
17. Changing/clarifying basic requirements for preneed contracts
18. Adopting/requiring standard forms for preneed contracts
19. Requiring the filing or approval of preneed forms & contracts with/by the Bd. or other agency
20. Definition of a "preneed contract"

COMPLAINTS/DISCIPLINE

TOPIC
21. Changing/clarifying the current Chapter 436 investigative/examination/audit process
22. Modifying the current disciplinary authority (Should it be limited/expanded?) COMPLETED
23. Allowing/modifying release of complaint information to the public COMPLETED
24. Allowing/modifying release of complaint information to providers/sellers with contractual relationships COMPLETED
25. Allowing civil penalties/fines for Chapter 436 violations
26. Allowing the regulatory agency for Chapter 436 to hire legal counsel
27. Expanding/modifying investigative, audit or examination powers of the Board/Attorney General's Office/Missouri Department of Insurance, etc.
28. Expanding/modifying criminal/civil authority of the Board/Insurance/Attorney General's Office

B. GENERAL DISCUSSION:

- Summary and general overview of trusting requirements for preneed funds from other states
- Summary and general overview of preneed refund requirements from other states (on cancellation, default, transfer, etc.)

Closed Meeting

Motion was made by Gary Fraker and seconded by Joy Gerstein to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; and Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney. Motion carried with Gary Fraker, Todd Mahn, John McCulloch and Joy Gerstein voting in favor with no votes in opposition. Martin Vernon was absent from the entire meeting.

Recess

The board recessed for a Closed Meeting working lunch at 12:00 p.m. and reconvened at 1:30 p.m.

12:15 p.m. – 1:30 p.m. – Closed Meeting

**Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri**

1:30 p.m. - 5:30 p.m. – Open Meeting

**Missouri Council of School Administrators
3550 Amazonas Drive (lower level)
Jefferson City, MO 65109**

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, returned to open session. The open meeting was called to order by James Reinhard, Chairman, at 1:30 p.m., at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

Chapter 436 Review discussion continued throughout the meeting.

Adjournment

A motion was made by Todd Mahn and seconded by Gary Fraker to adjourn. Motion carried with Gary Fraker, Todd Mahn, John McCulloch and Joy Gerstein voting in favor with no votes in opposition. Martin Vernon was absent from the entire meeting. The meeting adjourned at 4:45 p.m. on Tuesday, July 15, 2008.

Executive Director: _____

Approved by the Board on: _____

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors
Chapter 436 Review Committee

July 24, 2008
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

July 24, 2008
Missouri Council of School Administrators
3550 Amazonas Drive (lower level)
Jefferson City, Missouri

Thursday, July 24, 2008 – 8:30 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors, was called to order by James Reinhard, Chairman, at 8:30 a.m. on Thursday, July 24, 2008, at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

Board Members Present

James Reinhard, Chairman
Martin Vernon, Vice-Chairman
Gary Fraker, Secretary
Daniel (Todd) Mahn, Member
John McCulloch, Member
Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Kimberly Grinston, Board's Legal Counsel
David Broeker, Director of Division of Professional Registration
Jeana Groose, Division of Professional Registration

Closed Meeting

Motion was made by Joy Gerstein and seconded by Gary Fraker to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; and Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

July 24, 2008 – 9:30 a.m.

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, was called to order by James Reinhard, Chairman, at 9:30 a.m., at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

COMMITTEE REGULATORS

Linda Bohrer, Acting Director-Department of Insurance, Financial Institutions and Professional Registration ("DIFP")

David Broeker, Director, Division of Professional Registration*

Sharon Euler, Office of the Attorney General*

Mary Erickson, Senior Enforcement Counsel- DIFP

ABSENT - Larry McCord, General Counsel- DIFP

ABSENT - Mark Stahlhuth, Senior Counsel- Financial Section, DIFP

Rich Weaver, Deputy Commissioner, Division of Finance

ADDITIONAL COMMITTEE PARTICIPANTS

James Reinhard, Chairman, State Board of Embalmers and Funeral Directors

Martin Vernon, Vice Chairman, State Board of Embalmers and Funeral Directors

Gary Fraker, Secretary, State Board of Embalmers and Funeral Directors

Joy Gerstein, Public Member, State Board of Embalmers and Funeral Directors

Todd Mahn, Member, State Board of Embalmers and Funeral Directors

John McCulloch, Member, State Board of Embalmers and Funeral Directors
and American Prearranged Services

Bob Baker, Wright Baker Hill Funeral Home

ABSENT - Barbara Brown, Layne Renaissance Chapel, LLC

Norma Collins, AARP

ABSENT - Tom Kutis, Kutis Funeral Home, Inc.

George Cline, Kutis Funeral Home, Inc.

ABSENT - Jim Moody, Lobbyist, SCI

Representative Timothy Meadows

ABSENT - Barbara Newman, Representative Meadows' Office

Michael Meierhoffer, Meierhoffer Funeral Home & Crematory, Inc.

Darlene Russell, CFL Preneed

Josh Slocum, Executive Director, Funeral Consumer Alliance

Bill Stalter, Stalter Legal Services

Bill Trimm, Silver Haired Legislature

ABSENT - Jo Walker, Silver Haired Legislature

Don Otto, Executive Director, Missouri Funeral Directors and Embalmers
Association/Missouri Funeral Trust

Mark Warren, English & Monaco- Representing the Missouri Preneed Insurers Coalition of six
(6) life insurers with interests in the Missouri preneed market, including
Forethought Life Insurance Company, Funeral Directors Life, Great Western,

* Did not participate as a voting member of the Working Group. Due to pending litigation, the Missouri Attorney General's Office also refrained from voting, however, the Attorney General's Office assisted in Working Group discussions.

Homesteaders Life, National Guardian Life Insurance Company, and Pekin Life.

ABSENT - Mike Winters, Lobbyist, American Prearranged Services

COMMITTEE SUPPORT STAFF

Becky Dunn, Executive Director, State Board*

Jeana Goose, Division of Professional Registration*

Kimberly Grinston, Legal Counsel, Division of Professional Registration*

Lori Hayes, Inspector, State Board*

*Will not participate as a voting member of the Chapter 436 Review Committee Working Group. Due to pending litigation, the Missouri Attorney General's Office will also refrain from voting, however, the Attorney General's Office will assist in Working Group discussions.

Visitors Present:

Brad Speaks, Speaks Family Legacy Chapels

Sarah Madden, Attorney General's Office

Gerry Kraus, Homesteaders Life Company

Chris Roth, Bopp Chapel, MFDEA

Ann Monaco Warren, English Monaco

John Perkins

Larry Stroud, MFDEA President

Chris Follis, Follis & Sons Funeral Home

Conita Follis, Follis & Sons Funeral Home

Marion Watkins, Watkins Bros. Memorial Chapel

Eric Montegna, Meierhoffer Funeral Home & Crematory, Inc.

Clifton Hibbs, Meierhoffer Funeral Home & Crematory, Inc.

Nancy Peterson, Funeral Consumer Alliance – Kansas City

Amy Battagler, Stewart/DW Newcomers

D.J. Gross, Duncan Funeral Home

Tami Holliday, Hendren Andrea LLC

Chris Moody, Moody & Associates, SCI

James Miller, Reser Funeral Home

Calvin Whitaker, MFDEA 6th & 7th

Mark Collier, Collier's Funeral Home

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, will be discussing the following topics listed, along with the topics listed for the July 8, 2008 and July 15, 2008 not completed. The board has scheduled additional meetings on July 29th and August 12 to address additional concerns.

Approval of Agenda

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

Discussion will be reasonably limited to the topics identified below. The topics listed below are not suggestions of the Board. These are general topics/suggestions that have been presented to the board prior to the Chapter 436 meetings/discussions. Discussion will not be summarized in the minutes. A copy of the open meeting transcription will be maintained as a part of the meeting minutes. The Chapter 436 Review Committee will take all public suggestions and proposals under review and consideration before or at the next Chapter 436 Review Committee Meeting.

JULY 24TH / JULY 15TH
PROPOSED OPEN AGENDA

(HIGHLIGHTED ITEMS IDENTIFIED AS COMPLETED.)

Items not highlighted will be discussed and included for today's meeting or future meeting dates.)

A. 436 Discussion

PRENEED FUNDS

TOPIC
1. <u>Depositing of preneed funds (when funds are deposited). COMPLETED</u>
2. Collections of funds by preneed providers
3. Record keeping for preneed fund payments
4. <u>Notification to consumers of preneed fund payments, deposits, interest or account statements. COMPLETED</u>
5. Amount of funds required to be trusted (100%, 80%, etc.)
6. Refund of preneed funds
7. Amount of funds retained by seller/provider
8. Payments to providers for services rendered (time periods, recordkeeping, amount, etc.)

TRUST ISSUES:

TOPIC
9. Trustee duties/responsibilities
10. Independent investment advisors (prohibiting or restricting IIAs, requirements for selection, clarifying use/duties)
11. Reporting/notification requirements for trustees (reporting/notification to the Bd., consumers sellers, providers, the AG, etc.)
12. Record keeping for trustees
13. Trust disbursements
14. <u>Investment of trust funds (term life, whole life, "reasonable person" standard). COMPLETED</u>
15. <u>Location of trustees/trust accounts (Does the trust/trustee have to be in Missouri?). COMPLETED</u>
16. <u>Location of trust records (Where should records be kept). COMPLETED</u>
17. <u>Commingling of trust funds. COMPLETED</u>

18. "Rollover"/transfer of trust funds. COMPLETED
19. Notification of trust changes/transfers (i.e.- notification to the Bd., sellers, consumers, etc.). COMPLETED
20. Allocation of preneed interest

HANDLING OF PRENEED CONTRACTS

TOPIC
21. Portability (changing providers or transferring to another seller)
22. Rulemaking authority for the Board.

OPEN AGENDA JULY 8, 2008

(HIGHLIGHTED ITEMS IDENTIFIED AS COMPLETED.)

Items not highlighted will be discussed and included for today's meeting or future meeting dates.)

A. CHAPTER 436 LEGISLATIVE DISCUSSION:

GENERAL ADMINISTRATION:

TOPIC
1. Transferring Chapter 436 regulatory authority to another agency (i.e.- Insurance, Finance, the Attorney General's Office, etc.) COMPLETED
2. Transferring auditing functions only to another agency (i.e.- Insurance, Finance, the Attorney General's Office, etc.) COMPLETED

PRENEED SELLER ISSUES

TOPIC
3. Allowing/prohibiting third party sellers. COMPLETED
4. Allowing insurance funded preneed plans only. COMPLETED
5. Restricting preneed sales to insurance agents only. COMPLETED
6. Requiring bonding/insurance for preneed sellers. COMPLETED

INSURANCE ISSUES

TOPIC
7. Allowed use of insurance funded preneed plans (Including what type of insurance plans may be used). COMPLETED
8. Changing/clarifying regulation of preneed sellers selling insurance funded preneed plans only (Should this go to the Bd. or the Department of Insurance?). COMPLETED

PRENEED PROVIDER ISSUES

TOPIC
9. Clarifying who can be licensed as a preneed provider. (i.e.- must all preneed

providers be licensed funeral establishments) COMPLETED
10. Requiring bonding/insurance for preneed providers. COMPLETED

LICENSING/REGISTRATIONS:

TOPIC
11. Changing a preneed "registration" to a preneed "license". COMPLETED
12. Registering/licensing of individuals selling on behalf of preneed sellers. COMPLETED
13. Licensing requirements for preneed registrants
14. Clarifying/changing preneed registration or licensing requirements for cemeteries. COMPLETED
15. Clarifying whether trust accounts are required for all preneed sellers. COMPLETED

JOINT ACCOUNTS

TOPIC
16. Clarifying/amending persons authorized to use joint accounts (i.e.- should they be allowed for providers, sellers or both). COMPLETED

HANDLING OF PRENEED CONTRACTS

TOPIC
17. Changing/clarifying basic requirements for preneed contracts
18. Adopting/requiring standard forms for preneed contracts
19. Requiring the filing or approval of preneed forms & contracts with/by the Bd. or other agency
20. Definition of a "preneed contract"

COMPLAINTS/DISCIPLINE

TOPIC
21. Changing/clarifying the current Chapter 436 investigative/examination/audit process
22. Modifying the current disciplinary authority (Should it be limited/expanded?) COMPLETED
23. Allowing/modifying release of complaint information to the public COMPLETED
24. Allowing/modifying release of complaint information to providers/sellers with contractual relationships COMPLETED
25. Allowing civil penalties/fines for Chapter 436 violations
26. Allowing the regulatory agency for Chapter 436 to hire legal counsel
27. Expanding/modifying investigative, audit or examination powers of the Board/Attorney General's Office/Missouri Department of Insurance, etc.
28. Expanding/modifying criminal/civil authority of the

Board/Insurance/Attorney General's Office

B. GENERAL DISCUSSION:

- Summary and general overview of trusting requirements for preneed funds from other states
- Summary and general overview of preneed refund requirements from other states (on cancellation, default, transfer, etc.)

Josh Slocum, Funeral Consumer Alliance, Inc., Funeral Consumer Alliance of Greater Kansas City, presented the Chapter 436 Review Committee, their Proposed Amendment to Missouri Statutes, Chapter 436, Regarding Prepaid Funerals and Burials. A copy of the proposal will be maintained as a part of the meeting minutes.

Closed Meeting

Motion was made by Todd Mahn and seconded by Gary Fraker to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; and Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

Recess

The board recessed for a Closed Meeting working lunch at 12:09 p.m. and will reconvened at 1:30 p.m.

12:15 p.m. – 1:30 p.m. – Closed Meeting

**Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri**

1:30 p.m. - 5:30 p.m. – Open Meeting

**Missouri Council of School Administrators
3550 Amazonas Drive (lower level)
Jefferson City, MO 65109**

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, returned to open session. The open meeting was called to order by James Reinhard, Chairman, at 1:35 p.m., at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

Chapter 436 Review discussion continued throughout the meeting.

Adjournment

A motion was made by Todd Mahn and seconded by Gary Fraker to adjourn. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition. The meeting adjourned at 4:00 p.m. on Thursday, July 24, 2008.

Executive Director: _____

Approved by the Board on: _____

DRAFT

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors
Chapter 436 Review Committee

July 29, 2008
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

July 29, 2008
Missouri Council of School Administrators
3550 Amazonas Drive (lower level)
Jefferson City, Missouri

Tuesday, July 29, 2008 – 8:30 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors, was called to order by James Reinhard, Chairman, at 8:30 a.m. on Tuesday, July 29, 2008, at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

Board Members Present

James Reinhard, Chairman
Martin Vernon, Vice-Chairman
Gary Fraker, Secretary
Daniel (Todd) Mahn, Member
John McCulloch, Member
Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Kimberly Grinston, Board's Legal Counsel
David Broeker, Director of Division of Professional Registration
Connie Clarkston, Director of Budget & Legislation
Jeana Groose, Division of Professional Registration

Closed Meeting

Motion was made by Todd Mahn and seconded by Gary Fraker to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; and Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

July 29, 2008 – 9:30 a.m.

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, was called to order by James Reinhard, Chairman, at 10:10 a.m., at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

COMMITTEE REGULATORS

Linda Bohrer, Acting Director-Department of Insurance, Financial Institutions and Professional Registration ("DIFP")
David Broeker, Director, Division of Professional Registration*
Sharon Euler, Office of the Attorney General*
Mary Erickson, Senior Enforcement Counsel- DIFP
Larry McCord, General Counsel- DIFP
Mark Stahlhuth, Senior Counsel- Financial Section, DIFP
Rich Weaver, Deputy Commissioner, Division of Finance

ADDITIONAL COMMITTEE PARTICIPANTS

James Reinhard, Chairman, State Board of Embalmers and Funeral Directors
Martin Vernon, Vice Chairman, State Board of Embalmers and Funeral Directors
Gary Fraker, Secretary, State Board of Embalmers and Funeral Directors
Joy Gerstein, Public Member, State Board of Embalmers and Funeral Directors
Todd Mahn, Member, State Board of Embalmers and Funeral Directors
John McCulloch, Member, State Board of Embalmers and Funeral Directors
and American Prearranged Services
Bob Baker, Wright Baker Hill Funeral Home
Barbara Brown, Layne Renaissance Chapel, LLC
Norma Collins, AARP
Tom Kutis, Kutis Funeral Home, Inc.
George Cline, Kutis Funeral Home, Inc.
Jim Moody, Lobbyist, SCI
Representative Timothy Meadows
Barbara Newman, Representative Meadows' Office
Michael Meierhoffer, Meierhoffer Funeral Home & Crematory, Inc.
Darlene Russell, CFL Preneed
Josh Slocum, Executive Director, Funeral Consumer Alliance
Bill Stalter, Stalter Legal Services
Bill Trimm, Silver Haired Legislature
Jo Walker, Silver Haired Legislature
Don Otto, Executive Director, Missouri Funeral Directors and Embalmers Association/Missouri Funeral Trust
Mark Warren, Inglish & Monaco- Representing the Missouri Preneed Insurers Coalition of six (6) life insurers with interests in the Missouri preneed market, including Forethought Life Insurance Company, Funeral Directors Life, Great Western,

* Did not participate as a voting member of the Working Group. Due to pending litigation, the Missouri Attorney General's Office also refrained from voting, however, the Attorney General's Office assisted in Working Group discussions.

Homesteaders Life, National Guardian Life Insurance Company, and Pekin Life.

Mike Winters, Lobbyist, American Prearranged Services

COMMITTEE SUPPORT STAFF

Connie Clarkston, Director of Budget & Legislation

Becky Dunn, Executive Director, State Board*

Jeana Groose, Division of Professional Registration*

Kimberly Grinston, Legal Counsel, Division of Professional Registration*

Lori Hayes, Inspector, State Board*

*Will not participate as a voting member of the Chapter 436 Review Committee Working Group. Due to pending litigation, the Missouri Attorney General's Office will also refrain from voting, however, the Attorney General's Office will assist in Working Group discussions.

Visitors Present:

Sarah Madden, Attorney General's Office

Gerry Kraus, Homesteaders Life Company

Chris Roth, Bopp Chapel, MFDEA

Larry Stroud, MFDEA President

Eric Montegna, Meierhoffer Funeral Home & Crematory, Inc.

Tami Holliday, Hendren Andrea LLC

Chris Moody, Moody & Associates, SCI

Kassie Hayes, CFL

William Bennett, Britton-Bennett, MFDEA

Bill Ratliff, Missouri Bankers Association

Jim Buchholz, Buchholz Mortuary

Brian May, Chapel Hill

Kalene Summerville, Summerville & Patton Funeral Home

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, will be discussing the following topics listed for the July 8, 2008 and July 29/July 24/July 15, 2008 not completed. The board has scheduled an additional meeting for August 12 to address additional concerns.

Approval of Agenda

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

Discussion will be reasonably limited to the topics identified below. The topics listed below are not suggestions of the Board. These are general topics/suggestions that have been presented to the board prior to the Chapter 436 meetings/discussions. Discussion will not be summarized in the minutes. A copy of the open meeting transcription will be maintained as a part of the meeting minutes. The Chapter 436 Review Committee will take all public suggestions and proposals under review and consideration before or at the next Chapter 436 Review Committee Meeting.

JULY 29th/JULY 24th /JULY 15th

PROPOSED OPEN AGENDA

(HIGHLIGHTED ITEMS IDENTIFIED AS COMPLETED.)

Items not highlighted will be discussed and included for today's meeting or future meeting dates.)

A. 436 Discussion

PRENEED FUNDS

TOPIC
1. Depositing of preneed funds (when funds are deposited). COMPLETED
2. Collections of funds by preneed providers
3. Record keeping for preneed fund payments
4. Notification to consumers of preneed fund payments, deposits, interest or account statements. COMPLETED
5. Amount of funds required to be trusted (100%, 80%, etc.)
6. Refund of preneed funds
7. Amount of funds retained by seller/provider
8. Payments to providers for services rendered (time periods, recordkeeping, amount, etc.)

TRUST ISSUES:

TOPIC
9. Trustee duties/responsibilities
10. Independent investment advisors (prohibiting or restricting IIAs, requirements for selection, clarifying use/duties)
11. Reporting/notification requirements for trustees (reporting/notification to the Bd., consumers sellers, providers, the AG, etc.)
12. Record keeping for trustees
13. Trust disbursements
14. Investment of trust funds (term life, whole life, "reasonable person" standard). COMPLETED
15. Location of trustees/trust accounts (Does the trust/trustee have to be in Missouri?). COMPLETED
16. Location of trust records (Where should records be kept). COMPLETED
17. Commingling of trust funds. COMPLETED
18. "Rollover"/transfer of trust funds. COMPLETED
19. Notification of trust changes/transfers (i.e.- notification to the Bd., sellers, consumers, etc.). COMPLETED
20. Allocation of preneed interest

HANDLING OF PRENEED CONTRACTS

TOPIC
21. Portability (changing providers or transferring to another seller)
22. Rulemaking authority for the Board.

OPEN AGENDA JULY 8, 2008

(HIGHLIGHTED ITEMS IDENTIFIED AS COMPLETED.)

Items not highlighted will be discussed and included for today's meeting or future meeting dates.)

A. CHAPTER 436 LEGISLATIVE DISCUSSION:

GENERAL ADMINISTRATION:

TOPIC
1. Transferring Chapter 436 regulatory authority to another agency (i.e.- Insurance, Finance, the Attorney General's Office, etc.). COMPLETED
2. Transferring auditing functions <u>only</u> to another agency (i.e.- Insurance, Finance, the Attorney General's Office, etc.). COMPLETED

PRENEED SELLER ISSUES

TOPIC
3. Allowing/prohibiting third party sellers. COMPLETED
4. Allowing insurance funded preneed plans only. COMPLETED
5. Restricting preneed sales to insurance agents only. COMPLETED
6. Requiring bonding/insurance for preneed sellers. COMPLETED

INSURANCE ISSUES

TOPIC
7. Allowed use of insurance funded preneed plans (Including what type of insurance plans may be used). COMPLETED
8. Changing/clarifying regulation of preneed sellers selling insurance funded preneed plans only (Should this go to the Bd. or the Department of Insurance?). COMPLETED

PRENEED PROVIDER ISSUES

TOPIC
9. Clarifying who can be licensed as a preneed provider (i.e.- must all preneed providers be licensed funeral establishments) COMPLETED
10. Requiring bonding/insurance for preneed providers. COMPLETED

LICENSING/REGISTRATIONS:

TOPIC
11. Changing a preneed "registration" to a preneed "license". COMPLETED
12. Registering/licensing of individuals selling on behalf of preneed sellers. COMPLETED
13. Licensing requirements for preneed registrants
14. Clarifying/changing preneed registration or licensing requirements for cemeteries. COMPLETED
15. Clarifying whether trust accounts are required for all preneed sellers. COMPLETED

JOINT ACCOUNTS

TOPIC
16. Clarifying/amending persons authorized to use joint accounts (i.e.- should they be allowed for providers, sellers or both). COMPLETED

HANDLING OF PRENEED CONTRACTS

TOPIC
17. Changing/clarifying basic requirements for preneed contracts
18. Adopting/requiring standard forms for preneed contracts
19. Requiring the filing or approval of preneed forms & contracts with/by the Bd. or other agency
20. Definition of a "preneed contract"

COMPLAINTS/DISCIPLINE

TOPIC
21. Changing/clarifying the current Chapter 436 investigative/examination/audit process
22. Modifying the current disciplinary authority (Should it be limited/expanded?) COMPLETED
23. Allowing/modifying release of complaint information to the public COMPLETED
24. Allowing/modifying release of complaint information to providers/sellers with contractual relationships COMPLETED
25. Allowing civil penalties/fines for Chapter 436 violations
26. Allowing the regulatory agency for Chapter 436 to hire legal counsel
27. Expanding/modifying investigative, audit or examination powers of the Board/Attorney General's Office/Missouri Department of Insurance, etc.
28. Expanding/modifying criminal/civil authority of the Board/Insurance/Attorney General's Office

B. GENERAL DISCUSSION:

- Summary and general overview of trusting requirements for preneed funds from other states
- Summary and general overview of preneed refund requirements from other states (on cancellation, default, transfer, etc.)

For clarification to the 436 Committee Members, a 436 Proposed Draft, completed July 23, 2008 by Kimberly Grinston, board's legal counsel, was provided for review and comment. Comments were suggested for today's meeting.

PROPOSED DRAFT

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 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;
- (9) "Preneed Counselor," any person authorized to sell a preneed contract on behalf of a preneed seller;
- (10) "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;
- (11) "Provider", the person designated to provide the disposition or funeral services, facilities, or merchandise described in a preneed contract;
- (12) "Purchaser", the person who is obligated to pay under a preneed contract;
- (13) "Seller", the person who sells a preneed contract to a purchaser and who is obligated to collect and administer all payments made under such preneed contract;
- (14) "Trustee", the trustee of a preneed trust, including successor trustees.
- (15) "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 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.

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. 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.

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

(3) 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;

(4) 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;

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

(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 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;
- (6) 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;
- (7) 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 COUNSELORS

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 shall be registered with the Board as a preneed counselor. The Board shall maintain a registry of all preneed counselors 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 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.

6. Notwithstanding any other provision of law, the Board may remove a preneed counselor from the registry if the counselor 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 counselor 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 counselor registrant to notify the administrative hearing commission of his or her intent to appeal waives all rights to 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 counselor as required by this section.

SELLERS & PROVIDERS

333.738. 1. No seller or preneed counselor shall designate 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.

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

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

(2) Procedures for tracking preneed contract funds or payments received by the provider

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;

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

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 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.

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;

(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 if the contract is revocable or irrevocable;

(7) Set forth the terms for cancellation by the purchaser or by the seller on default of payment;

(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;

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

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

(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;

(13) 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;

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

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

(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;

(14) 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.

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

4. After *the seller retains any amount authorized by sections 333.700 to 333.900*, 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.

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.

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

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 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.

7. The seller of a preneed contract shall be entitled to all income, including, without limitation, interest, dividends, and capital gains, and losses generated by the investment of preneed trust property regarding such contract, and the trustee of the trust may distribute all income, net of losses, to the seller 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.

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.

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 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 counselor to procure or accept a loan against any investment or asset of or belonging to a preneed trust.

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 sell, 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 counselor;
- (3) An 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.

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.

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.

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

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.

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

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

- (1) The name, addresses and contract number of all purchasers as reflected in any preneed contract sold since the filing of the last report;
- (2) The total number and total face value of preneed contracts sold since the filing of the last report;
- (3) The contract amount of each preneed contract sold since the filing of the last report, identified by contract;
- (4) The 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;
- (6) The name, address and license number of all preneed counselors 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.
- (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) 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;
- (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;
- (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;
- (5) *The status, total face value and total cash surrender value of each policy, and;*
- (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) Preneed contracts 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.

INVESTIGATION/INSPECTIONS

333.765.1. The Board shall have authority to:

(1) Conduct inspections of preneed providers, sellers and counselors 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 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;

(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;

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.

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 subpoena to compel the production of records and papers by any licensee or registrant of the board. Subpoenas issued pursuant to this section shall be

served in the same manner as subpoenas in a criminal case.

6. All preneed sellers, providers and counselors 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. 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;
- (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;

(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, 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;

(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 Chapter 333 or sections 333.700 to 333.900;

(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;

(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;

(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;

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

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.

4. Notwithstanding any other provision of this section, the board may automatically suspend a license 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 the stealing, misappropriation or theft of funds.

5. A person whose license was 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.

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 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 shall be paid to that person.

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 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.

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 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;
- (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*. 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.

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 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;
 - (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;
 - (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.
 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.
 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 purchaser with any related interest or earnings. 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.
 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.

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 shall be paid to that person.

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.

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.

Public Suggestions/Proposals

The board requested suggestions and proposals for review and consideration from the 436 Committee Members and public attendees.

Chairman Reinhard made sure that all 436 Committee Members and the public attending were provided materials for today's meeting. All proposals and comments are provided in PDF format on the Board's website under meeting postings, and will be maintained as a part of the meeting minutes.

Funeral Consumer Alliance - FCA Presentation Missouri Preneed 2008

MFDEA Preneed Concept

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

Handouts for today's meeting (Will be maintained as a part of the meeting minutes)

Meierhoffer Suggested Changes

Portability Issues (draft proposed solution) - Sharon Euler

Kutis Funeral Home Inc. Comments

The document below was provided as a working document for the 436 committee members.

CONTRACT TYPE: _____

FULFILLED

\$\$\$\$ DEPOSITED	100%
ADMIN. EXPENSE	20%
INTEREST	SELLER
TRUST/ACCOUNT FEES	FROM TRUST
MISC.	

CANCELLED BY PURCHASER

\$\$\$\$ DEPOSITED	100%
CUSTOMER REIMB.	80%
ADMIN. EXPENSE	20%
INTEREST	10% CONSUMER/ 90% SELLER
TRUST/ACCOUNT FEES	FROM TRUST
MISC	

DEFAULT

\$\$\$\$ DEPOSITED	
CUSTOMER REIMB.	
ADMIN. EXPENSE	
INTEREST	
TRUST/ACCOUNT FEES	
MISC.	

TRANSFER

\$\$\$\$ DEPOSITED	
CUSTOMER REIMB.	
ADMIN. EXPENSE	
INTEREST	
TRUST/ACCOUNT FEES	
MISC.	

Closed Meeting

Motion was made by Todd Mahn and seconded by Gary Fraker to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; and

Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

Recess

The board recessed for a Closed Meeting working lunch at 12:00 p.m. and will reconvened at 1:30 p.m.

12:15 p.m. – 1:30 p.m. – Closed Meeting

**Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri**

1:30 p.m. - 5:30 p.m. – Open Meeting

**Missouri Council of School Administrators
3550 Amazonas Drive (lower level)
Jefferson City, MO 65109**

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, returned to open session. The open meeting was called to order by James Reinhard, Chairman, at 1:30 p.m., at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

Chapter 436 Review discussion continued throughout the meeting.

Adjournment

A motion was made by Todd Mahn and seconded by Gary Fraker to adjourn. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition. The meeting adjourned at 4:15 p.m. on Tuesday, July 29, 2008.

Executive Director: _____

Approved by the Board on: _____

**OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors
Chapter 436 Review Committee**

**August 12, 2008
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri**

**August 12, 2008
Missouri Council of School Administrators
3550 Amazonas Drive (lower level)
Jefferson City, Missouri**

Tuesday, August 12, 2008 – 8:30a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors, was called to order by James Reinhard, Chairman, at 8:30 a.m. on Tuesday, August 12, 2008, at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

Board Members Present

James Reinhard, Chairman
Gary Fraker, Secretary
Daniel (Todd) Mahn, Member
John McCulloch, Member
Joy Gerstein, Public Member (joined at 9:45)

Board Members Absent:

Martin Vernon, Vice-Chairman

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Kimberly Grinston, Board's Legal Counsel
David Broeker, Director of Division of Professional Registration
Connie Clarkston, Director of Budget & Legislation
Jeana Groose, Division of Professional Registration

Closed Meeting

Motion was made by Gary Fraker and seconded by Todd Mahn to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; and Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action

or litigation and any confidential or privileged communications between this agency and its attorney. Motion carried with James Reinhard, Gary Fraker, Todd Mahn, and John McCulloch voting in favor with no votes in opposition. Joy Gerstein were absent for this portion of the meeting, and Martin Vernon was absent from the entire meeting.

August 12, 2008 – 9:30 a.m.

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, was called to order by James Reinhard, Chairman, at 9:30 a.m., at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

COMMITTEE REGULATORS

Linda Bohrer, Acting Director-Department of Insurance, Financial Institutions and Professional Registration ("DIFP")

David Broeker, Director, Division of Professional Registration*

Sharon Euler, Office of the Attorney General*

Mary Erickson, Senior Enforcement Counsel- DIFP

Larry McCord, General Counsel- DIFP

ABSENT - Mark Stahlhuth, Senior Counsel- Financial Section, DIFP

ABSENT - Rich Weaver, Deputy Commissioner, Division of Finance

ADDITIONAL COMMITTEE PARTICIPANTS

James Reinhard, Chairman, State Board of Embalmers and Funeral Directors

ABSENT - Martin Vernon, Vice Chairman, State Board of Embalmers and Funeral Directors

Gary Fraker, Secretary, State Board of Embalmers and Funeral Directors

Joy Gerstein, Public Member, State Board of Embalmers and Funeral Directors

Todd Mahn, Member, State Board of Embalmers and Funeral Directors

John McCulloch, Member, State Board of Embalmers and Funeral Directors

and American Prearranged Services

Bob Baker, Wright Baker Hill Funeral Home

ABSENT - Barbara Brown, Layne Renaissance Chapel, LLC

Norma Collins, AARP

ABSENT - Tom Kutis, Kutis Funeral Home, Inc.

George Cline, Kutis Funeral Home, Inc.

ABSENT - Jim Moody, Lobbyist, SCI

ABSENT - Representative Timothy Meadows

Barbara Newman, Representative Meadows' Office

Michael Meierhoffer, Meierhoffer Funeral Home & Crematory, Inc.

Darlene Russell, CFL Preneed

ABSENT - Josh Slocum, Executive Director, Funeral Consumer Alliance

Bill Stalter, Stalter Legal Services

Bill Trimm, Silver Haired Legislature

ABSENT - Jo Walker, Silver Haired Legislature

* Did not participate as a voting member of the Working Group. Due to pending litigation, the Missouri Attorney General's Office also refrained from voting, however, the Attorney General's Office assisted in WorkingGroup discussions.

Don Otto, Executive Director, Missouri Funeral Directors and Embalmers Association/Missouri Funeral Trust

Mark Warren, English & Monaco- Representing the Missouri Preneed Insurers Coalition of six (6) life insurers with interests in the Missouri preneed market, including Forethought Life Insurance Company, Funeral Directors Life, Great Western, Homesteaders Life, National Guardian Life Insurance Company, and Pekin Life.

Mike Winters, Lobbyist, American Prearranged Services

COMMITTEE SUPPORT STAFF

Connie Clarkston, Director of Budget & Legislation

Becky Dunn, Executive Director, State Board*

Jeana Groose, Division of Professional Registration*

Kimberly Grinston, Legal Counsel, Division of Professional Registration*

Lori Hayes, Inspector, State Board*

*Will not participate as a voting member of the Chapter 436 Review Committee Working Group. Due to pending litigation, the Missouri Attorney General's Office will also refrain from voting, however, the Attorney General's Office will assist in Working Group discussions.

Visitors Present:

Sarah Madden, Attorney General's Office

Gerry Kraus, Homesteaders Life Company

Chris Roth, Bopp Chapel, MFDEA

Larry Stroud, MFDEA President

Eric Montegna, Meierhoffer Funeral Home & Crematory, Inc.

Tami Holliday, Hendren Andrea LLC

Jim Buchholz, Buchholz Mortuary

Pam Houk, Mason-Woodard Mortary

Bill Stuart, Cater Funeral Home

Chris Kaiser, MFDEA

Brad Speaks, Speaks Family Legacy Chapels

John Moore, Moore Funeral Home

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, will be discussing the following topics listed for the July 8, 2008 and July 29/July 24/July 15, 2008 not completed. The board has scheduled an additional meeting for August 12 to address additional concerns.

Approval of Agenda

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

Discussion today will primarily focus on the trusting and cancellation provisions, but not limited to those topics. Discussion will not be summarized in the minutes. A copy of the open meeting transcription will be maintained as a part of the meeting minutes. The following 436 Proposed Draft, completed July 29, 2008 by Kimberly Grinston, board's legal counsel was provided for review and comments. The 436 Committee Members will take all public suggestions and proposals under review and consideration.

CHAPTER 436 DRAFT (2008-07-28)

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", a systematic examination of financial statements, records and related operations to determine adherence to generally accepted accounting principles, management policies, or stated requirements as required by statute. Audit for this purpose will be initiated by the Board after examination and investigation if deemed necessary. (Meierhoffer August 4, 2008)

(2) "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;

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

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

(5) "Examination of books and records" – For the purposes of the statute, the review by the Board and its staff of the annual reporting as specified in this chapter. After Examination or for cause the Board may initiate and investigation. (Meierhoffer, August 4, 2008)

(6) "Guaranteed contact"

(7) " (Meierhoffer) "Funeral merchandise", casket, grave vaults, or receptacles, and other personal property incidental to a funeral service. (Notes: Items such as grave lots, grave space, grave markers, monuments, tombstones, crypts niches or mausoleums are covered by Chapter 214, Missouri Revised Statutes, and are under the purview of the Office of Endowed Care) (Meierhoffer, August 8, 20008)

"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) – Conducting of the ceremony as related to the final disposition of the deceased as contracted between a licensed funeral establishment and next-of-kin of the deceased. (Meierhoffer, August 4, 2008)

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

(10) "Investigation"—The process initiated by the Board after an Examination of Books and Records has shown cause for further review of an funeral establishment, provider or seller's financial records. After investigation, or for cause, the Board may initiate an audit. (Meierhoffer, August 4, 2008)

(11) "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;

(12) "Market value" – See DIFP Comment

(13) "Non-guaranteed contract"

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

(15) "Preneed contract", any contract that provides 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)**

(16) "Preneed sales agent," any person authorized to sell a preneed contract on behalf of a preneed seller; **(Solocum)**

(17) "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;

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

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

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

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

(22) "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 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 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)**
(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;

(4) 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;

(5) 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:

(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 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)**

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)**
 - (6) Identify the name and address of a custodian of records responsible for maintaining the books and records of the seller relating to preneed contracts;
 - (7) 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;
 - (8) **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)**
 - (9) 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;
 - (10) 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 SALES 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)

Comment: In addition to the above comment, licensed insurance producers in the State of Missouri should have the same arrangement. Licensing for this purpose should be for those without funeral director licenses, apprentice funeral director registrations or insurance licenses. (Meierhoffer, August 4, 2008)

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 shall be registered with the Board as a preneed

sales agent. The Board shall maintain a registry of all preneed **sales 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 **sales 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;

(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)**

(6) 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 **sales 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;

(3) Provide the name and address of each seller for whom the **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 **sales 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 **sales agent** from the registry if the **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 **sales 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 **sales agent** registrant to notify the administrative hearing commission of his or her intent to appeal waives all rights to 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 **sales agent** as required by this section.

SELLERS & PROVIDERS

333.738. 1. No **person** shall be designated 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) **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 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;

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

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 facilities, merchandise and services described in the preneed contract for the beneficiary. 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)**

(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 if the contract is revocable or irrevocable;
- (7) Set forth the terms for cancellation by the purchaser or by the seller on default of payment **and transfer of the contract; (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
- (10) Include the name, address and phone number of any insurance company issuing an insurance policy used to fund the preneed contract;
- (11) Identify the type of insurance that will be used to fund the insurance policy, including, the number of such policy, if available;
(Meierhoffer).
- (12) 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;
- (13) Include the name and signature of the purchaser, the preneed **sales agent** responsible for the sale of, if any, and of the seller, or its duly authorized representative;
- (14) Include the signature of the preneed provider, **or their designee**, if the preneed contract is sold to the purchaser by the provider; **and (Meierhoffer).**
(Meierhoffer).
- (15) 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 **(Meierhoffer).**
- 4. Comment: as discussed earlier in our sessions, 100% of the contract amount would be deposited in the trust and 20% would be reimbursed to the seller for administrative expenses, commissions, etc. (Meierhoffer, August 4, 2008)**
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 forty five days of receipt of such funds by the seller or its designee. (Grinston)**

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

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 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. The seller of a preneed contract shall be entitled to all income, including, without limitation, interest, dividends, and capital gains, and losses generated by the investment of preneed trust property regarding such contract, and the trustee of the trust may distribute all income, net of losses, to the seller 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.

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 **(Strike Slocum's addition, Meierhoffer, August 4, 2008)**

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 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 sales agent to procure or accept a loan against any investment or asset of or belonging to a preneed trust.

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 sell, 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 **preneed 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.

INSURANCE-FUNDED PRENEED CONTRACTS

SEE DIFP document.

333.751.1. 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 **preneed sales agent** for more than thirty days from the date of receipt.

4. (Meierhoffer)

Comment: Are there other regulated disciplines that have to adhere to such onerous rules? Insurance agents/brokers? Investment advisors? Bankers? Car Salesmen? Anyone? (Meierhoffer, August 4, 2008)

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 **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.

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

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.

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:

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

- (2) The total number and total face value of preneed contracts sold since the filing of the last report;
 - (3) The contract amount of each preneed contract sold since the filing of the last report, identified by contract;
 - (4) The 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;
 - (6) The name, address and license number of all preneed **sales 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.
 - (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,;
 - (14) **A copy of each preneed contract sold, which may be provided by a scanned electronic copy; and (Solocum)**
 - (15) 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 **licensed to do business in the State of (Meierhoffer, August 4, 2008)** 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;

(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;

(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;

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

(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 preneed contracts, including financial institution statements and certificate of performance signed by the next-of-kin or responsible party for the deceased (Meierhoffer,**

August 4, 2008) 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:

(1) Conduct inspections of preneed providers, sellers and **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 **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 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 [five] years, **or for cause as determined by the Board (Meierhoffer, August 4, 2008)** as financially permissible pursuant to the funding of the board; **(Kutis and Meierhoffer) (Strike random sampling, Meierhoffer, August 4, 2008) 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)**

Comment: What is the purpose of the added language? If there is a statute providing for the other departments or the attorney general's assistance, should this be necessary? (Meierhoffer, August 4, 2008)

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 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.

6. All preneed sellers, providers, sales agents, or trustees 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)

9. If an investigation, audit or examination finds

Comment: Please clarify what "finds a violation" means. Does this mean an investigation/audit has led to a ruling by the AG's office and a decision has been rendered by the attorney general? (Meierhoffer, August 4, 2008)

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;
- (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;

(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)**

(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 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;

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

(18 If the Federal Trade Commission finds a violation, the remedy will be determined by the FTC and no lesser authority or state should have any penalty. (Meierhoffer, August 4, 2008)

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)**

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 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 **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 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 shall be paid to that person.

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 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 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;

(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*. 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.

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 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;

(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.

(Meierhoff)

(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 purchaser with any related interest or earnings. 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.

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.

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 shall be paid to that person.

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.

- 2. 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.

3 Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly 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.

Public Suggestions/Proposals

The board requested suggestions and proposals for review and consideration from the 436 Committee Members and public attendees.

Chairman Reinhard made sure that all 436 Committee Members and the public attending were provided materials for today's meeting. All proposals and comments are provided in PDF format on the Board's website under meeting postings, and will be maintained as a part of the meeting minutes.

AARP Comments

Bill Stalter Letter to Connie Clarkston 436 Recommendations

Bill Stalter Letter to Linda Bohrer 436 Recommendations

Draft of Trusting & Cancellation

Funeral Consumer Alliance Comments 436 Committee

Homesteader 436 Proposed Draft

Michael Meierhoffer 436 Proposed Draft

Michael Meierhoffer comments

Missouri Funeral Trust Comments to Funeral Consumer Alliance 436 Committee

Closed Meeting

Motion was made by Gary Fraker and seconded by Todd Mahn to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; and Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney. Motion carried with James Reinhard, Gary Fraker, Todd Mahn, and John McCulloch voting in favor with no votes in opposition. Joy Gerstein were absent for this portion of the meeting, and Martin Vernon was absent from the entire meeting.

The board recessed for a Closed Meeting working lunch at 12:00 p.m. and will reconvene at 1:30 p.m.

12:15 p.m. – 1:30 p.m. – Closed Meeting

**Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri**

1:30 p.m. - 5:00 p.m. – Open Meeting

**Missouri Council of School Administrators
3550 Amazonas Drive (lower level)
Jefferson City, MO 65109**

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, returned to open session. The open meeting was called to order by James Reinhard, Chairman, at 1:30 p.m., at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

Chapter 436 Review discussion continued throughout the meeting. The board requested additional comments from the 436 Committee Members and public attendees to the Chapter 436 Draft to be received by no later than August 22, 2008. Another draft with the additional comments will be sent out to everyone and possibly schedule a meeting the week of August 25th. A Draft of the Final Recommendation from the Chapter 436 Review Committee will be submitted to the Joint Committee as the final product. At the conclusion of the meeting James Reinhard thanked everyone on behalf of the Board, Division and Department, for their time and dedication to the Chapter 436 Review Committee Meetings.

Adjournment

A motion was made by Todd Mahn and seconded by Gary Fraker to adjourn. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition. Martin Vernon was absent from the entire meeting. The meeting adjourned at 4:30 p.m. on Tuesday, August 12, 2008.

Executive Director: _____

Approved by the Board on: _____

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

August 26, 2008 – 3:30 p.m.
Division of Professional Registration
3605 Missouri Blvd.
Jefferson City, Missouri

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order via conference call by James Reinhard, Chairman, at 3:35 p.m. on Tuesday, August 26, 2008, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Board Members Present

James Reinhard, Chairman - via conference call
Martin Vernon, Vice-President - via conference call
Gary Fraker, Secretary - via conference call
Daniel (Todd) Mahn, Member - via conference call
John McCulloch, Member - via conference call

Board Members Absent

Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Pam Schnieders, Administrative Assistant
Kimberly Grinston, Board's Legal Counsel - via conference call
Sharon Euler, Assistant Attorney General - via conference call

Closed Meeting

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

Adjournment

A motion was made by Martin Vernon and seconded by Todd Mahn to adjourn. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, and John McCulloch voting in favor with no votes in opposition. Joy Gerstein was absent from the entire meeting. The meeting adjourned at 4:45 pm on Tuesday, August 26, 2008.

Executive Director: _____

Approved by the Board on: _____

DRAFT

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors

September 4, 2008
Missouri Council of School Administrators
3550 Amazonas Drive (lower level)
Jefferson City, Missouri

Thursday, September 4, – 9:30a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors, was called to order by James Reinhard, Chairman, at 9:30 a.m. on Thursday, September 4, 2008, at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

Board Members Present

James Reinhard, Chairman - via conference call
Martin Vernon, Vice-Chairman - via conference call
Gary Fraker, Secretary - via conference call
Daniel (Todd) Mahn, Member - via conference call
John McCulloch, Member

Board Members Absent:

Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Pam Schnieders, Administrative Assistant
Kimberly Grinston, Board's Legal Counsel

Public Present in Person

David Broeker, Director of Division of Professional Registration
Linda Bohrer, Acting Director-Department of Insurance, Financial Institutions and Professional Registration ("DIFP")
Mary Erickson, Senior Enforcement Counsel- DIFP
Rich Weaver, Deputy Commissioner, Division of Finance
Bob Baker, Wright Baker Hill Funeral Home
Representative Timothy Meadows
Darlene Russell, CFL Preened
Bill Stalter, Stalter Legal Services
Don Otto, Executive Director, Missouri Funeral Directors and Embalmers Association/Missouri Funeral Trust
Ann Monaco Warren, Inghish & Monaco
Mike Winters, Lobbyist, American Prearranged Services
Tami Holliday, Hendren Andrea LLC

Brad Speaks, Speaks Family Legacy Chapels
Chris Moody, SCI
J. Scott Lindley, Lindley Funeral Home
Tom Reichards, Executive Director of Endowed Care Cemeteries

Public Present via Conference Call

Sharon Euler, Office of the Attorney General
Sarah Madden, Attorney General's Office
Rich Alm, Kansas City Star
Michael Meierhoffer, Meierhoffer Funeral Home & Crematory, Inc.
John Moore, Moore Funeral Home
Bill Stuart, Cater Funeral Home

Approval of Agenda

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

Scott Lindley addressed the board at 9:40 a.m. relating to the NPS concerns and thanking the Chapter 436 Review Committee for meeting to help the consumers.

The following 436 Proposed Draft, completed September 2, 2008 by Kimberly Grinston, board's legal counsel was provided for review, discussion and comments. Discussion will not be summarized in the minutes. A copy of the open meeting transcription will be maintained as a part of the meeting minutes. The 436 Committee Members will take all public suggestions and proposals under review and consideration.

**STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
CHAPTER 436 WORKING GROUP RECOMMENDATIONS**

Dear Joint Committee Members:

Over the last year, the nation has witnessed an unprecedented crisis in the preneed industry. Estimates of the financial impact on Missouri consumers and the funeral industry are alarming. Although recent concerns relate to a single entity, the crisis has focused much needed attention on the regulation of preneed funeral contracts in the state of Missouri and Chapter 436, RSMo, governing preneed sales.

Pursuant to Missouri law, regulatory jurisdiction over preneed sales is vested in the Missouri State Board of Embalmers and Funeral Directors (the "Board"). As part of its statutory duties, the Board annually reviews legislation to identify potential recommendations of the Board. In recent years, this process has included a review of Chapter 436.

As part of its annual legislative review, the Board was invited to gather a working group of representatives from across the preneed industry to collectively identify suggested preneed recommendations for the Joint Committee's review. The Working Group consisted of participants from all aspects of the preneed industry, including, consumer group liaisons, members of the State Board and representatives from the funeral, preneed and insurance industries.

The Working Group respectfully submits the attached recommendations to the Joint Committee for review. While a myriad of opinions were identified, the Working Group unanimously agreed that revisions to Chapter 436 are desperately needed to

better protect Missouri consumers and those funeral directors, funeral establishments, preneed providers and preneed sellers who truly dedicate themselves to serving the public.

We commend the General Assembly in convening the Joint Committee and in dedicating the time and resources to this important task.

Sincerely,

To be determined

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III. CONCLUSION

I. GENERAL OVERVIEW:

During the 2008-2009 legislative session, several Chapter 436 legislative proposals were introduced. Although not enacted, Senate Bill 788 was passed by the General Assembly which created the Joint Committee on Preneed Funeral Contracts.

Although many of the provisions of Chapter 436 were strongly debated, the legislative discussion revealed several common areas of agreement among regulators, industry representatives and consumer groups. At the close of the legislative session, Senator Delbert Scott and Representative Jay Wasson met with several of the legislative participants to discuss many of the Chapter 436 concerns. The Board was subsequently asked to formulate a working group to help identify the collective areas of agreement and to collate suggested legislative recommendations for the Joint Committee's review.

The Working Group subsequently participated in a series of six (6) meetings in Jefferson City, Missouri. 1 Meetings of the Working Group were organized and hosted by the Board and conducted as open meetings in accordance with Chapter 610, RSMo. As required by Missouri law, notice of meetings were made publicly available and posted on the Board's website.

II. PARTICIPANTS:

The Working Group consisted of representatives from all aspects of the preneed industry, including, preneed providers and sellers as well representatives from consumer groups, the Missouri Funeral Directors and Embalmers Association, related insurance companies and representatives from small, large and minority funeral establishments. Participants were chosen from prior legislative involvement and from recommendations made by legislators, Board members and related consumer groups. Members of the public were also invited to attend and given an opportunity to provide both oral and written comments.

The Working Group included:

REGULATORS:

Linda Bohrer	Acting Director- Department of Insurance, Financial Institutions and Professional Registration ("DIFP")
David Broeker	Division Director, Division of Professional Registration*
Sharon Euler	Office of the Attorney General
Mary Erickson	Senior Enforcement Counsel- DIFP
Larry McCord	General Counsel- DIFP
Mark Stahlhuth	Senior Counsel- Financial Section, DIFP
Rich Weaver	Director, Division of Finance

ADDITIONAL PARTICIPANTS:

James Reinhard,	Chair, State Board of Embalmers and Funeral Directors
Gary Fraker	Board Member
Joy Gerstein	Board Member
Todd Mahn	Board Member
Martin Vernon	Board Member
John McCulloch	Board Member/American Prearranged Services
Bob Baker	Wright Baker Hill Funeral Home
Barbara Brown	Layne Renaissance Chapel, LLC
Norma Collins	AARP
Tom Kutis/	Kutis Funeral Home, Inc.
George Cline	
Jim Moody	Lobbyist, SCI
Rep. Timothy Meadows	
Michael Meierhoffer	Meierhoffer Funeral Home & Crematory, Inc.
Barbara Newman	Rep. Meadows' Office
Darlene Russell	Charter Life Insurance Co.
Josh Slocum	Executive Director, Funeral Consumer Alliance
Bill Stalter	Stalter Legal Services
Bill Trimm/	Silver Haired Legislators
Jo Walker	
Don Otto	Executive Director, Missouri Funeral Director and Embalmers Association/Missouri Funeral Trust
Mark Warren	Inglish & Monaco- Representing Homesteaders Life Insurance, etc.
Mike Winters	Lobbyist, American Prearranged Services

COMMITTEE SUPPORT STAFF:

Connie Clarkston	Director of Budget & Legislation, Division of Professional Registration*
Becky Dunn	Executive Director, State Board*
Jeanne Groose	Administrative Assistant to Director of Budget & Legislation, Division of Professional Registration*
Kimberly Grinston	Legal Counsel, Division of Professional Registration*
Lori Hayes	Inspector, State Board*

III. REVIEW PROCESS:

To guide the review, the Board formulated a survey containing a listing by topic area of Chapter 436 proposals previously submitted to the Board. Participants were asked to rank the priority of topic areas for purposes of discussion. Rankings were subsequently compiled by the Division and used to structure Working Group discussions. [See Appendix 1- Bd. Survey].

The surveyed topics were ranked as follows:

[INCLUDE SURVEY RESULTS HERE]

For purposes of this Report, recommendations have been categorized as follows:

Unanimous Recommendations: Recommended by a unanimous vote of all Working Group Participants.

Consensus Recommendations: Recommended by an overwhelming majority of Participants, generally with less than 15% of Participants dissenting.

Majority Recommendations: Recommended by a simple majority vote of Working Group Participants.

Unresolved: Majority vote not reached. Suggestions from Participants have been provided.

GENERAL REGULATORY AUTHORITY

Working Group agreed to the following unanimous recommendations:

1. Regulatory authority over Chapter 436 and preneed licensing should remain with the Board and should not be transferred to another agency. However, regulation of financial institutions and trustees should remain with the Division of Finance.

! Comments: *The Division and Board support this proposal but would also support transferring authority if another regulatory agency is deemed more appropriate.*

2. The Missouri Attorney General should be granted concurrent jurisdiction with local prosecutors to prosecute violations of Chapter 436.

! Comments: *Stalter Legal Services suggested that providing concurrent jurisdiction should be condition upon a requirement that the prosecutor confer with the State Board prior to initiating legal proceedings. Stalter also recommended that concurrent jurisdiction should be limited to violations involving theft or fraud.*

3. The Board should be granted general rulemaking authority to administer Chapter 436 and to establish necessary fees.
4. The Board should be authorized to hire legal counsel to assist in the enforcement of Chapter 436.

! Comments: *The Board indicated this proposal would allow them to utilize both the Attorney General's Office and outside counsel, if necessary. Representatives from the Attorney General's Office refrained from the vote.*

! Comments: *Funeral Consumers Alliance suggested that the current licensee confidentiality restrictions should also be revised to allow dissemination of more information to the public. Division staff indicated that the current confidentiality restrictions apply to all regulated boards/commissions within the Division and would require a statutory change.*

DEFINITIONS

The definitions governing Chapter 436 are ambiguous and do not reflect current preneed business practices. Accordingly, the Working Group approved the following unanimous recommendations:

- **"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.
- **"Board,"** the Missouri State Board of Embalmers and Funeral Directors.
- **"Division"**, the division of professional registration of the department of insurance, financial institutions and professional registration.
- **"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 spaces, grave markers, monuments, tombstones, crypts, niches or mausoleums.
- **"Guaranteed Contract"**, A preneed contract in which the seller promises, assures or guarantees to the purchaser that all or any portion of the costs for the disposition, facilities, service or merchandise identified in a preneed contract will be no greater than the price designated in the contract upon the preneed beneficiary's death or that such costs will be otherwise limited or restricted.
- **"Insurance-Funded Preneed Contract"**, - A preneed contract which is designated to be funded by payments or proceeds from an insurance policy.
- **"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.
- **"Market Value"**, - A fair market value,
 - (a) As to cash, the amount 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 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.
- **"Non-Guaranteed Contract"**, A preneed contract in which the seller does not promise, assure or guarantee that all or any portion of the costs for the disposition, facilities, service or merchandise identified in a preneed contract will be limited to the price designated in the contract upon the preneed beneficiary's death or that such costs will be otherwise limited or restricted.
- **"Person"**, any individual, partnership, corporation, cooperative, association, or other entity.
- **"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 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 or at a future date.
- **"Preneed Agent,"** any person authorized to sell a preneed contract for or on behalf of a preneed seller.
- **"Preneed trust"**, a trust established by a seller to receive deposits of, administer, and disburse payments received under preneed contracts by such seller, together with income thereon.
- **"Provider"**, the person designated to provide the disposition or funeral services, facilities, or merchandise described in a preneed contract.
- **"Purchaser"**, the person who is obligated to pay under a preneed contract.
- **"Seller"**, the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.
- **"Trustee"**, the trustee of a preneed trust, including successor trustees.
- **"Trust-Funded Preneed Contract"**, - A preneed contract which provides that payments for the preneed contract shall be deposited and maintained in trust.

GENERAL LICENSING/REGISTRATION REQUIREMENTS

The Working Group agreed to the following unanimous recommendations:

1. All preneed providers/sellers should be formally "licensed" by the Board as opposed to the currently required "registration." A "license" denotes legal obligations and more accurately reflects the authorization being issued by the Board.

2. Regulation of Insurance Contracts: Chapter 436 should clearly provide that the provisions of the Chapter are inapplicable to contracts of insurance. However, Chapter 436 should apply to any preneed contract sold in conjunction with insurance. The current statutory language regarding insurance assignments or beneficiary designations is unclear and should be modified in compliance with the recommendation.
3. Bonding/Insurance: Due to potential costs and questioned availability, preneed licensees should not be required to obtain bonding or insurance as a condition of licensure. The Working Group suggested that increasing consumer protections and regulatory oversight would adequately address regulatory concerns.

The Working Group agreed to the following consensus recommendations:

1. Licensure of "preneed agents": Individuals selling preneed for or on behalf of a preneed seller should be licensed by the Board as a "preneed agent" (*see Preneed Agent section for recommended licensing requirements*).

! Comments: *APS expressed financial concerns regarding imposing full licensing and disciplinary requirements on agents and supported a "registration" requirement versus licensure.*

2. Regulation of Cemetery Operators: Chapter 436 should be clarified to exempt cemetery operators from the provisions of Chapter 436 if the contract includes the sale of any service or funeral merchandise for which payments must be deposited in an endowed care fund pursuant to Chapter 214 or in a segregated account pursuant to 214.387, RSMo. However, cemetery operator should be subject to Chapter 436 if the contract includes any additional service or merchandise or includes any funeral/disposition service that may only be provided by a licensed Missouri funeral director or embalmer.

! Comments: *If adopted, Chapter 436 should retain language that would prevent a seller from artificially pricing funeral services and merchandise to avoid the provisions of Chapter 436.*

PRENEED CONTRACTS

The Working Group approved the following unanimous recommendations:

1. To accommodate the varying forms of preneed, Chapter 436 should define and regulate preneed contracts based on their funding mechanism. Specifically, preneed contracts should be classified as either insurance-funded, trust-funded or joint-account funded. Unique regulatory concerns relate to each type of funding. Accordingly, Chapter 436 should be modified to address each funding option.
2. Standard Forms: While the Working Group supported minimum preneed contract requirements, as detailed below, a standard preneed contract form should not be required. Preneed contracts can vary significantly based on the applicable needs of the consumer and individual seller or legal requirements. Adoption of a standard form to accommodate all of these interests may be difficult.

! Comments: *Although MFDEA supported the vote, representatives stressed that a standard form could be beneficial. Other participants suggested granting the Board rulemaking authority to adopt a standard form if deemed necessary.*

3. Minimum Requirements: Preneed contracts should be in writing and should clearly and conspicuously:
 - o Include the name, address and phone number of the purchaser, beneficiary, provider and the seller;
 - o Detail the disposition or facilities, services or merchandise requested.
 - o Identify terms for cancelling the contract by the purchaser or by the seller for payment default.
 - o Identify the funding mechanism including, the trust or financial institution where preneed funds will be held or the insurance company issuing an insurance policy.
 - o Be signed by the purchaser, the preneed agent and the seller or a representative.

! Comments: *MFDEA recommended that the contract should also be signed by the provider.*

4. **Record Keeping:** Preneed sellers should maintain “adequate records” of preneed contracts for the duration of the contract and for no less than five (5) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided. Contracts should be provided to the Board on request. *Note: The five (5) year record keeping requirement is consistent with the auditing period recommended by the Working Group.*

! Comments: Funeral Consumers Alliance recommended that sellers should also file a copy of all preneed contracts sold with the Board. While the Board understands the concern, maintaining and storing these records may be burdensome and costly. The Board indicated that production on request would satisfy regulatory concerns.

5. **Voidability:** Similar to current law, preneed contracts not in compliance with Chapter 436 should be rendered void and unenforceable at the option of the purchaser. If rendered void, payments may be recoverable by the purchaser or their legal representative plus attorney fees.
6. On the death or legal incapacity of the purchaser, all rights or remedies of the purchaser should accrue to the benefit of the purchaser or his/her successor as designated in the contract. Proceeds payable under a life insurance contract, should be governed by insurance law and the insurance contract. [WORKING GROUP NOTE: Bill suggested incorporating the right of sepulcher law under 194.119].

The Working Group approved the following consensus recommendations:

1. **Irrevocable Contracts:** A preneed contracts should only be designated as irrevocable if the contract is being used to qualify for Medicaid (i.e.-for “spend down”). Purchasers should be clearly granted the right to cancel, transfer or rescind a preneed contract with or without cause.

! Comments: Kutis Funeral Home suggested that purchasers should also be given the option to make the contract irrevocable. Kutis suggested this would protect purchasers who may want to protect the contract and insure that funds will be used as directed. Alternatively, Homesteaders Life Insurance Co., suggested the funding for preneed contracts should be made irrevocable and not the contract itself. The commenter remarked that irrevocable contracts may hinder a consumer’s freedom of choice.

2. **Minimum Requirements:** In addition to the recommendations above, a consensus of the Working Group also recommended that preneed contracts should:
- o Designate whether the contract is revocable or irrevocable in a recognizable font.
 - o Include mandatory consumer disclosures as established by the Board by rule.
 - o Identify the amount/percentage of administrative expenses to be retained by the seller.

! Comments: Meierhoffer Funeral Chapel, Kutis Funeral Chapel and APS objected to this requirement and to disclosing administrative expenses to the purchaser. However, a consensus of participants believed that, at a minimum, the purchaser should know what he/she is paying for. Under the objection, the seller would be authorized to charge an expense that it never discloses. At the time of cancellation or transfer, the purchaser may not know what amount is subject to refund or the amount actually paid for the services requested. A consensus of participants indicated that disclosure would enhance consumer protection and result in an informed transaction.

- o Identify if the contract is guaranteed or non-guaranteed on the face of the contract in a recognizable type (i.e.- a 12 to 13 point font).

! Comments: APS suggested an 8-point font is considered recognizable and acceptable.

3. **Contract Redesignation/Conversion:** Sellers/providers should be prohibited from redesignating a preneed contract as a trust-funded, insurance-funded or joint-account funded preneed contract without the consent of the purchaser.

! Comments: Funeral Consumers Alliance suggested that purchasers should also be given a written statement identifying the financial consequences of the redesignation (i.e.- reduction in cash surrender value, interest accrual and fees).

Alternatively, Stalter Legal Services suggested that conversion should be allowed with regulatory approval and without consumer consent. Stalter suggested that conversion may be beneficial for smaller trusts. Additionally, Stalter suggested that facts and circumstances may warrant a change in funding but the expense of seeking purchaser consent could be prohibitive. Stalter suggested conversion may alternatively be in the purchaser's best interest, however, the explanation would likely be confusing.

! Comments: The Board also recommended that contracts include notification that complaints regarding preneed sellers/providers may be forwarded to the Board and the current number/address of the Board. [AARP, the Silver Haired Legislators and the Funeral Consumers Alliance also agreed with this suggestion]. However, APS and Meierhoffer Funeral Chapel objected on the grounds that the disclosure may render the Board the de facto arbiter for all contract issues that may arise and would lead to the Board hearing issues that could have been resolved by the parties.

PRENEED AGENTS

The Working Group approved the following consensus recommendations:

1. Licensing/Renewal Requirements:

- Applicants must be of good moral character, remit a licensing fee and have a high school diploma or the equivalent.

! Comments: APS objected to imposing a good moral character or a high school diploma requirement for preneed agents.

- To demonstrate minimum proficiency in Chapter 436, applicants should be required to successfully pass the Missouri law examination, provided that currently licensed Missouri funeral directors should not be required to take an additional examination.

! Comments: The Missouri law examination is currently offered by the Board and tests basic knowledge of Chapter 436 and Missouri law governing funeral directing. However, MFDEA objected to exempting currently licensed funeral directors from examination because funeral directors may have taken the examination a significant time ago. MFDEA indicated that funeral directors selling preneed should be required to demonstrate their current understanding of Chapter 436. Although Stalter Legal Services did not support full examination for funeral directors, Stalter recommended that funeral directors should be required to demonstrate a fundamental understanding of Chapter 436 on a periodic basis.

Stalter Legal Services also suggested that funeral directors should be exempted from obtaining another license. Alternatively, Meierhoffer Funeral Chapels and Kutis Funeral Home suggested exempting apprentice funeral directors from just the examination. Meierhoffer also suggested an exemption for licensed insurance producers.

2. Reporting: Preneed agents should report the name and address of all sellers that the agent will be selling for. Agents should notify the Board in writing within 15 days of any amendments/changes.

PRENEED PROVIDERS

The Working Group unanimously approved the following recommendations:

1. Authorized Providers: In recent years, suggestions have been made that only Missouri licensed funeral establishments or cemetery operators should be authorized to serve as a preneed provider. However, private individuals are currently authorized by Missouri law to sell funeral merchandise preneed or at-need. In accordance with current law, and in light of recent concerns raised by the Federal Trade Commission, preneed provider licensing should not be restricted solely to funeral establishments or cemetery operators. However, it should be

clarified that Chapter 436 does not exempt any person from the licensing requirements of Chapter 333 governing funeral directing.

2. Licensing/Renewal Requirements:

- Applicants must be of good moral character, remit a licensing fee and have a high school diploma or the equivalent. If a corporation, licensure/renewal requirements should be applicable to each officer, director, manager or controlling shareholder.
- Providers operating as business entities must be properly registered with the Missouri Secretary of State and authorized to conduct business in Missouri.

3. Provider Obligations: Chapter 436 should clearly state that the provider designated in a preneed contract is obligated to provide the disposition, facilities, services or merchandise designated in the preneed contract.

4. Contractual Arrangements: Providers must have a written agreement with each preneed seller that the provider has authorized to designate the licensee as a provider in a preneed contract. This may potentially eliminate the possibility of a provider being obligated to fulfill a preneed contract without the provider's consent.

5. Reporting: Providers should report to the Board the name and address of its custodian of records and of all sellers authorized to name the licensee as a provider. Providers should notify the Board in writing within 15 days of any amendments/changes.

! Comments: Although Stalter Legal Services supported the vote, Stalter questioned whether a separate license should be required for the provider servicing the contract. Stalter commented that licensure would only apply to entities not licensed under Chapter 333 governing funeral directors/establishments and that a license requirement may be burdensome if the provider does not handle consumer funds.

PRENEED SELLERS

The Working Group adopted the following unanimous recommendations:

1. General Operation: Preneed sellers should have the option to sell either a trust-funded, joint-account funded or insurance-funded preneed contract. Sellers should notify the Board of the type of contracts to be sold and should be prohibited from offering any preneed contract other than the type designated.

2. Licensing/Renewal Requirements:

- Preneed sellers must be of good moral character, remit a licensing fee and have a high school diploma or the equivalent. If a corporation, licensure/renewal requirements should be applicable to each officer, director, manager or controlling shareholder.

! Comments: Stalter Legal Services suggested that requiring good moral character for each officer, director, manager or controlling shareholder of the corporation would be "excessive and vague."

- Sellers operating as business entities must be properly registered with the Missouri Secretary of State and authorized to conduct business in Missouri.
- For purposes of licensure, a seller should only be required to establish a preneed trust if the seller is issuing trust-funded preneed plans. A trust should not be required if the seller is selling joint-account or insurance-funded preneed plans only.

3. Contractual Arrangements: Sellers should be prohibited from designating, or allowing the designation of, any provider in a preneed contract unless the seller has a written agreement with the provider authorizing the seller to make the designation. This could eliminate the possibility of a provider being obligated to fulfill a preneed contract without the provider's consent. The written agreement between the provider and seller should include:

- Consent from the provider authorizing the seller to designate the licensee as a provider.
- Procedures for tracking preneed fund payments received by the provider.

! Comments: Stalter Legal Services acknowledged that several things "should" be included in a seller/provider contract but generally questioned whether contract requirements should be governed by statute.

4. Reporting: Sellers should report to the Board the name and address of its custodian of records and of all providers that have authorized the seller to name the licensee as a provider. Sellers should notify the Board in writing within 15 days of any amendments/changes.
5. Record Keeping: Sellers should maintain "adequate records" of preneed contracts for the duration of the contract and for no less than five (5) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided. Copies of preneed contracts should be provided to the Board upon request. *Note: The five (5) year record keeping requirement is consistent with the auditing period recommended by the Working Group.*

TRUST FUNDED PRENEED PLANS

The Working Group approved the following consensus recommendations:

1. Trusting Structure: Currently, a seller is authorized to retain 20% of the initial preneed payments for administrative expenses and is not required to deposit funds into trust until the seller has retained the allowed 20%. The Working Group recommended reversing the trusting structure to require the seller to deposit 100% of all contract payments into trust. After depositing, sellers should then be allowed to submit a request to the trustee for the allowed administrative expense. (*see administrative expense recommendations below*).

! Comments: Participants suggested that 100% initial funding would document proper accounting and allow for a more accurate examination/audit. However, APS, Meierhoffer Funeral Chapel and Kutis Funeral Home suggested this change would create additional administrative expenses that could be passed onto the consumer and strongly recommended retaining the current process of allowing the seller to retain the first 20% of contract payments and to trust the remaining 80%.

Alternatively, Stalter Legal Services suggested that recommendations for 100% trusting are "shortsighted and ignore the realities of other states' laws." Stalter indicated that income accrual issues are more important to consumer protection. Stalter commented that the recommendation exemplifies the current misunderstanding regarding sales expenses versus administrative expenses.

2. Regardless of the trusting structure, the seller's administrative expense should be payable from the initial payments received.
3. Reporting: Sellers should report the name and address of its trustee to the Board and should notify the Board in writing within 15 days of any amendments/changes.

The Working Group approved the following consensus recommendations:

4. Preneed contract payments should be deposited into trust within sixty-days of receipt by the seller.

! Comments: It was suggested that sixty-days would allow sufficient administrative time for processing and forwarding payments to the seller and for clearing payments made by check. However, other participants suggested that a 30-45 day deposit requirement would increase consumer protection.

The following Working Group recommendations were unresolved:

After considerable discussion and research, the Working Group did not reach a consensus or majority vote on the recommended allowance for seller administrative expenses. However, Participants recommended the following amounts:

5. Administrative Expenses:
 - **Three quarters (¾) of 1% of the contract's face value.**
 - Josh Slocum. *Note: This provision models New York's preneed legislation.*
 - **10 % of face value: Although several participants indicated consumers may be better protected with a lower amount of administrative expenses, a slight majority of participants agreed that 10% of the face value would be a reasonable compromise.**
 - AARP
 - Bob Baker
 - Darlene Russell
 - MFDEA
 - Silver Haired Legislature

- Stalter Legal Services
- Rep. Meadows
- **10 – 15% of face value**
 - DIFP
- **20% of face value:** A slight majority of participants recommended retaining the current 20% allowance for administrative expenses (*however see comments below*).
 - The Board
 - Layne Renaissance Chapel, LLC
 - Mike Meierhoffer
 - Kutis Funeral Home
 - American Prearranged Services
 - Mike Winters

! *Comments:* *The Board recommended that it would support a 20% administrative expense only if a 100% trusting requirement is imposed.*

REGULATION OF TRUSTS & TRUSTEES

GENERAL REQUIREMENTS:

The Working Group approved the following unanimous recommendations:

1. **Uniform Trust Law/Uniform Principal and Income Act:** The Working Group was asked to make recommendations on whether the provisions of the Uniform Trust Act under Chapter 469 and the Uniform Principal and Income Act under Chapter 456 should be incorporated into Chapter 436. After review, Participants indicated that wholly incorporating Chapters 469 and 456 would be inappropriate given the nature of preneed. Specifically, Participants suggested that the provisions of Chapters 469 and 456 which allow the trustee and grantor to modify the statutory requirements by agreement, or which require consideration of the competing interests of beneficiaries, would conflict with the underlying principals/purpose of a preneed trust. It was further suggested that the definition of income in Chapter 469 is inappropriate for preneed. Accordingly, the Working Group recommended against blanketly incorporating the provisions of Chapter 469 and Chapter 456.

! *Comments:* *Several of the consumer protection and fiduciary requirements contained in Chapters 469 and 456 have been incorporated into the Working Group's recommendations.*

2. **Authorized Trustees:** Trustees of a preneed trust should be a state or federally chartered institution authorized to exercise trust powers in Missouri.

! *Comments:* *Bill Stalter recommended that regulation of the trust and trustee functions should be transferred to the Division of Finance. Additionally, Stalter recommended that non-domicile fiduciaries should be required to: 1) consent to service of process in Cole County, 2) respond promptly to reasonable requests for records and 3) agree to administration pursuant to Chapter 436.*

3. **Termination of Trust:** Consistent with current law, a preneed trust should terminate when trust principal no longer includes any payments made under any preneed contract. On termination, the trustee should distribute all trust property, including principal and undistributed income, to the seller that established the trust. **NOTE TO WORKING GROUP:** Meierhoffer suggested that this should be changed to termination when all contracts covered by the trust have been fulfilled.

The Working Group approved the following consensus recommendations:

4. **Trust Expenses:** Expenses of the trust, including trustee's fees, legal and accounting fees, investment expenses and taxes should be paid from the trust.

! Comments: Several participants recommended that expenses of the trust should continue to be paid by the seller directly. Concerns were raised that allowing payment from the trust could reduce trust principal. Other participants remarked the seller's allowed administrative expense should be adjusted to account for the savings for trust and legal fees/expenses. Alternatively, Kutis Funeral Home suggested maintaining the current law and requiring the seller to continue paying these expenses.

The Working Group approved the following majority recommendations:

5. **Income Accrual:** Income of the trust should accrue and should not be distributed until the contract is fulfilled or otherwise cancelled.

! Comments: Several participants recommended that the current income distribution rules should be maintained and income distributions allowed as earned. However, Stalter Legal Services indicated that income accrual is important to the future profitability of the seller and to improved portability.

TRUSTEE DUTIES:

The Working Group unanimously approved the following recommendations:

6. **Investment:** The trustees should be governed by the prudent investor rule. Specifically, trustees should 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 should exercise reasonable care, skill, and caution.
7. **Standard of Duty:** Trustees who have special skills or expertise, or who are named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, should have a duty to use those special skills or expertise when investing and managing trust assets.
8. **Trust Review:** Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee should review the trust assets and make and implement decisions concerning the retention 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 Missouri law.
9. **Record Keeping:** The trustee should maintain "adequate books and records" of all transactions administered through the trust and pertaining to the trust generally.

CONFLICTS OF INTEREST:

The Working Group unanimously agreed that conflicts of interest between trustees and investment advisors should be prohibited. Specifically, **the following unanimous recommendations were made:**

10. The financial institution and investment advisor should not be controlled by or under common control with the seller.

! Comments: Stalter Legal Services recommended that while the trustee should be independent of the seller, it is unnecessary for the investment advisor to be independent of the seller. Stalter commented that asset management is enhanced by investment advisors who understand the unique circumstances of the Trustor/seller. Stalter noted that under the prudent investment standard recommended by the Working Group, fiduciaries would be otherwise required to ensure the prudence of the advisor selection and the advisor's compliance with the prudent investor rule. Stalter commented that Chapter 436 breached these protocols by exculpating the trustee from fiduciary oversight.

11. "Control", "controlled by" and "under common control with" should be defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contact other than the power is the result of an official position with or corporate office held otherwise, unless the power is the result of an official position with or corporate office held by the person.
12. Control should 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 that control does not in fact exist to determine within its sole discretion that control does not in fact exist.

13. Trustees should be prohibited from selling, investing or authorizing any transaction involving the investment or management of trust property with:
- o The spouse of the trustee;
 - o Descendants, siblings, parents, or spouses of a preneed seller or an officer, manager, director or employee of a preneed seller, provider or counselor;
 - o Agents or attorneys of the trustee, preneed seller or provider; or
 - o 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.

! Comments: *Stalter Legal Services recommended that a seller should be allowed to have a relationship with the advisor so long as the fiduciary remains responsible for the trust's compliance with the prudent investor rule and retains title of the assets.*

INVESTMENT OF FUNDS:

The Working Group unanimously approved the following recommendations:

14. Investment of trust funds should be limited to investments that have reasonable potential for growth or producing income.
15. Trustees should be prohibited from investing trust funds in any term life insurance product.
16. Asset diversification should be mandatory unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better serviced without diversifying.

! Comments: *Stalter Legal Services suggested that diversification would be difficult/impracticable if fiduciaries are not afforded more latitude in providing pooled investments or collective investment trusts for smaller operators.*

17. In investing trust assets, a trustee should be required to consider:
- o General economic conditions;
 - o The possible effect of inflation or deflation;
 - o The expected tax consequences of investment decisions or strategies;
 - o The role that each investment or course of action plays within the overall trust portfolio;
 - o The expected total return from income and the appreciation of capital;
 - o Other resources of the beneficiaries known to the trustee;
 - o Needs for liquidity, regularity of income, and preservation or appreciation of capital;
 - o 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
 - o The size of the portfolio, nature and estimated duration of the fiduciary relationship and distribution requirements under the governing instrument.
18. Trustees and preneed licensees should be prohibited from procuring or accepting a loan against any investment or asset of the trust.

The Working Group approved the following consensus recommendations:

19. Commingling of trust funds should only be allowed if the trustee maintains adequate records that individually and separately identify payments and distributions and the income allocated for each preneed contract. However, commingling should be limited to payments received for Missouri preneed contracts.

! Comments: *APS commented that income for an individual preneed contract may be difficult to determine, however, APS agreed that an estimate could be made based on the contract's percentage of the total trust. Alternatively, Stalter Legal Services recommended that restricting commingling to Missouri preneed contracts may be disadvantageous for smaller trusts and could defeat the purpose of allowing collective investing.*

DELEGATION OF TRUST DUTIES/INDEPENDENT INVESTMENT ADVISORS:

The Working Group approved the following consensus recommendations:

20. Delegation of Trust Duties: Trustees should only delegate duties and powers to an agent that a prudent trustee of comparable skills could properly delegate under the circumstances.
21. If an agent is selected, the trustee should exercise reasonable care, skill, and caution in:
 - o Selecting an agent;
 - o Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
 - o Periodically reviewing the agent's actions and monitoring the agent's performance and compliance with the terms of the delegation.
22. In performing a delegated function, an agent should owe a duty to the trust to exercise reasonable care to comply with the terms of the delegation.
23. Agents that accept a delegation of powers or duties from a trustee should be deemed to have consented to the jurisdiction of Missouri courts.
24. By selecting an agent, a trustee should not be relieved of any duty or responsibility imposed on the trustee by Missouri law.
25. Independent Investment Advisors: Trustees should be allowed to select an independent investment advisor subject to the conflict of interest prohibition and the prudent investor rule. Sellers should not be blanketly exempted from liability for the acts of an independent investment advisor.

The Working Group approved the following recommendations by majority vote:

26. Independent Investment Advisors: Sellers should also be allowed to approve the investment advisor selected by the trustee.

! Comments: *The Department of Insurance, Division of Finance, State Board and the Missouri Attorney General's Office unanimously agree that seller approval of the investment advisor would hinder the independence of the investment advisor and threaten consumer protection. The suggestion proposed would allow the NPS concerns to reoccur. Consumers should not, and cannot, be placed at continued risk of unscrupulous business practices. A trustee of a financial institution should be more than capable of selecting an investment advisor that would be adequate for the trust. Seller "approval" is not and should not be required.*

INSURANCE-FUNDED PRENEED PLANS

The Working Group adopted the following unanimous recommendations:

1. Although commonly used, Chapter 436 does not clearly provide for insurance-funded preneed contracts. As such, insurance-funded preneed plans should be recognized as a preneed funding mechanism.
2. Applicability of Insurance Law: Insurance law should not apply to preneed contracts but should apply to any insurance sold with a preneed contract.
3. Fees/Expenses: Sellers should not charge, assess or collect any administrative fees for an insurance-funded preneed plan. Instead, sellers should only be allowed to receive/collect from a purchaser the amount required to pay insurance premiums as established by the insurer.
4. Payment Handling: Payments received by the seller/provider for insurance-funded preneed contracts should be forwarded to the insurer within thirty (30) days of receipt.

! Comments: *Homesteaders remarked that sellers/providers should only be authorized to collect the initial premium payment. All subsequent premium payments should be made directly to the insurer.*

5. Insurance Restrictions: Sellers should be prohibited from selling or offering to sell any term life insurance product to fund a preneed contract. However, a purchaser should be allowed the option of assigning proceeds from a term-life insurance product to a provider, or to designate a provider as a beneficiary under a preneed contract.

! Comments: MFDEA recommended that a blanket prohibition may be overreaching and that consumers should still be allowed to assign proceeds from a pre-existing term-life product to a provider or to designate a funeral establishment as the beneficiary. MFDEA remarked that term life insurance may be the only affordable option for some consumers or the only insurance option that may be available to consumers that are older or have significant health problems. It was also suggested that the assignment or designation of a term life insurance product may be necessary for purchasers attempting to qualify for Medicaid.

6. **Reporting:** Sellers should report the name and address of all insurance companies used by the seller for insurance funding to the Board and should notify the Board in writing within 15 days of any amendments/changes.

The Working Group adopted the following consensus recommendation:

5. **Contract Requirements:** Insurance-funded preneed contracts should include:
- o Terms for cancellation by the purchaser or seller;
 - o Notice that cancellation of the preneed contract will not cancel the life insurance policy funding the preneed contract.
 - o Notice that insurance cancellation must be made in writing to the insurer.
 - o Notice that the purchaser will only receive the cash surrender value of the policy, which may be less than the amount paid in, if cancelled after a designated time;
 - o Notice that the purchaser has the right to reassign/transfer the beneficiary designation or assignment to another funeral home.

! Comments: Concerns were raised that the majority of this information should be provided by the insurer and included in the insurance contract because it would require the seller to summarize the insurance contract. Alternatively, Homesteaders suggested use of the National Association of Insurance Commissioner's model for insurance funded disclosures.

Alternatively, MFDEA suggested that sellers should also disclose the amount to be refunded if the insurance contract is cancelled and the total amount the purchaser would be required to pay for their funeral if funded through insurance. MFDEA suggested these disclosures should be required separate from the insurance contract itself.

Funeral Consumers Alliance suggested the contract should also include the amount of any insurance commissions.

JOINT ACCOUNT-FUNDED PRENEED CONTRACTS

A consensus of the Working Group suggested the current provisions for joint-account funded preneed plans are adequate and should be maintained. **However, the Working Group approved the following consensus recommendations:**

1. Chapter 436 should be clarified to provide that a preneed seller may sell joint-account funded contracts. Currently, Chapter 436 only authorizes joint accounts for providers.
2. **Reporting:** Sellers should report the name and address of all financial institutions where a joint account is held and should notify the Board in writing within 15 days of any amendments/changes.
3. A seller should not be required to establish or maintain a trust if the seller is utilizing joint-account funded preneed contracts only.

! Comments: MFDEA recommended that joint-funded preneed contracts should be generally subject to the same deposit, cancellation, portability and income allocation requirements as trust-funded preneed contracts.

Alternatively, Stalter Legal Services indicated that "while small funeral homes need the joint account option as an alternative to insurance and trusting, there seems to be general concern the arrangement has been abused by funeral directors who are placing large sums of funds in a single account or CD. It is understandable that funeral directors would prefer to retain sole control of the funds, and avoid expenses but [joint accounts] exposes the purchasers' funds to the claims of the funeral home creditors (i.e.- a casualty judgment)." Accordingly, Stalter recommended that funeral directors should not be permitted to use the joint account arrangement if their aggregate funds exceed the \$100,000 FDIC coverage.

PAYMENTS TO PROVIDERS

The Working Group adopted the following unanimous recommendations:

1. **Payment Requests:** Providers requesting payment should submit a “certificate of performance” to the seller certifying that the provider has rendered services to the preneed beneficiary as provided in the contract or as requested. The certificate of performance should be signed by both the provider and the person authorized to make arrangements on behalf of the beneficiary.
2. Sellers should remit payment to the provider within thirty (30) days of receiving the certificate of performance.
3. Sellers should remit payment to the provider within thirty (30) days after receiving the certificate of performance.

ALLOCATION OF PRENEED FUNDS (EXPENSES, CANCELLATION & PORTABILITY)

The Working Group dedicated significant discussion to the proper allocation of preneed contract funds and related interest. The Working Group considered the proper allocation of preneed funds based on four distinct preneed scenarios:

1. **Contract Fulfillment:** The beneficiary dies and the preneed contract is fulfilled by the original seller and provider according to the contract terms. In this scenario, the purchaser has paid all outstanding costs and the provider and seller have complied with all contractual obligations.
2. **Transfer of Providers:** The purchaser decides to maintain the preneed contract but desires to select a different provider to perform the disposition or to provide the facilities, services or merchandise identified in the contract.
3. **Cancellation By Purchaser:** The purchaser decides to cancel the contract entirely. Here, the purchaser does not wish to designate a new provider or make other changes to the contract. Instead, the contract is to be completely terminated.
4. **Cancellation By Seller For Non-Payment:** This option is exercised by the seller in those instances when the purchaser has failed to remit payment as required by the contract. If exercised, the preneed contract is cancelled and is no longer in effect.

Each of the foregoing scenarios are vastly different and raise different consumer and funding concerns. Accordingly, the Working Group recommends that the Joint Committee separately consider the allocation of preneed funds/interest for each scenario.

A. Contract Fulfillment:

The Working Group approved the following unanimous recommendations:

- On fulfillment, sellers should be entitled to payment of all funds held in trust and any related income, unless otherwise provided in the contract.

B. Transfer of Providers:

The Working Group approved the following unanimous recommendations:

- Chapter 436 should clearly allow for 100% portability. Purchasers should have complete and unrestricted freedom to select an alternative provider and should not be penalized or assessed any additional fee/costs for a transfer.
- The Seller should be required to accept the new provider designated by the purchaser if the provider agrees to accept the remaining payments owed to the original provider, as designated in the contract. Here, the newly designated provider would simply “step into the shoes” of the original provider for purposes of payment and fulfilling the contract.

! Comments: While MFDEA generally supported this recommendation, concerns were raised that: 1) A seller should not be forced into a legal relationship with a party the seller does not have a contract with and with whom the seller does not wish to be in business with and 2) A seller/provider could be forced to invest funds on behalf of, and for the benefit of, a competitor.

- Interest should be allocated to the seller as provided in the original contract.

C. Purchaser Cancellation:

The Working Group approved the following unanimous recommendations:

- Purchasers should be entitled to a full refund of payments if the purchaser cancels the contract within thirty (30) days after receiving a fully executed contract.
- Purchasers should be allowed to cancel after the thirty day cancellation period with or without cause (see additional recommendations below).

Additional Recommendations:

! Comments: MFDEA commented that cancellation and portability cannot be adequately discussed until the allowed amount for administrative expenses is determined. In accordance with MFDEA's comment, the recommended allocation and refunding are generally based on the administrative expense recommended by the participant. Accordingly, the foregoing recommendations. The following allocation/refunding amounts are being provided for informational purposes only. Should the amount of administrative expenses change, the recommendations would also change.

After extensive discussion and research, the Working Group did not reach a unanimous, consensus or majority recommendation for the refunding of preneed funds if the purchaser cancels the contract after the 30-day review period.

However, Working Group Participants suggested the following allocation/refund amounts:

- 100% of all funds held in trust. *Note: This option would require the seller to refund its expenses to the purchaser plus any related income.*
- 100% of the amount paid by the purchaser. *Note: This option would require the seller to refund expenses, however, the seller would retain any related income.*
- 90% of the amount paid by the purchaser. *Note: This option would allow the seller to retain a portion of the funds for expenses plus any related income.*
- 90% of all payments plus a portion of the income earned. *Note: This option would allow the seller to retain a portion of the funds for expenses, however, a portion of the income would be refunded to the purchaser.*
- 80% of the payments made by the purchaser. *Note: This option would allow the seller to retain its expenses plus any related income.*
- 80% of all payments plus a portion of the income earned. *Note: This option would allow the seller to retain a portion of the funds for expenses, however, a portion of the income would be refunded to the purchaser.*
- 80% of all payments plus one percent of any income earned. *Note: This option would allow the seller to retain its administrative expenses, however, 1% of income would be refunded to the purchaser. [State Board Recommendation]*

! Comments: The above recommendations were also suggested based on the premise that 100% of payments will be placed in trust with the seller being reimbursed for administrative expenses from the trust. The recommendations would necessarily change if the 100% trusting recommendation is not accepted and the seller allowed to automatically retain its administrative expenses from the initial payments.

D. Cancellation By Seller For Non-Payment:

The Working Group approved the following consensus recommendations:

- Sellers should be allowed to cancel the contract unilaterally if the purchaser is in default of payment for sixty days (see additional recommendations for refund provisions).
- Prior to cancellation, purchasers should be provided written notification from the seller of the seller's intent to cancel. The notice should be provided thirty days prior to cancellation and should notify the purchaser of the proposed cancellation date and that the contract will be cancelled if payment is not received on or before such dates.

! Comments: Currently, a seller can cancel a contract that is 90-days in arrears by notifying the purchaser and issuing the required refund. Notification and cancellation may be completed on the same day. APS suggested the current law is fairer to all parties and should be retained. APS indicated the proposed recommendation could be problematic when handling purchasers that are habitually late.

- If the seller fails to cancel the contract prior to at-need services being required, the purchaser should be provided the opportunity to remit the payment in arrears. If payment is not remitted, the seller should be required to credit the purchaser's preneed payments towards the at-need cost for services. If a credit is applied, the seller may determine funeral/burial costs based on the seller's at-need prices.

The Working Group approved the following majority recommendations:

- On seller cancellation, 80% percent of the contract payments should be refunded to purchasers. *Note: This option would allow the seller to retain its administrative expenses plus any related income.*

! Comments: Other Participants recommended that 100% of all payments made by the purchaser should be refunded to the purchaser. *Note: This option would require the seller to refund any administrative expenses, however, the seller would be allowed to retain any income.*

REPORTING REQUIREMENTS

To assist the Board in regulation, the Working Group recommended increasing the information submitted to the Board by preneed licensees as follows:

! Comments: APS indicated that the majority of information recommended below would be available to the Board upon examination/audit. As a result, APS filed a general objection to the annual reporting requirements and expressed that it would not "be prudent or fair to require preneed sellers to file this much information on annual reports."

**ANNUAL REPORT
REQUIREMENTS FOR ALL PRENEED SELLERS**

! Comments: Sellers should be allowed to submit data electronically.

The Working Group approved the following consensus recommendations: Annual reports filed with the Board by the seller should include:

1. The purchaser's name and address and preneed contract number, if any, for contracts sold since the last report. The Working Group recommended that contract numbers should not be required but should be provided, if available.
2. The total number and face value of outstanding preneed contracts sold since the last report was filed.
3. The contract amount for each preneed contract sold since the last annual report
4. The name, address and contract number of all preneed agents authorized to sell preneed for the seller.
5. The number of contracts fulfilled by the seller since the last report.
6. The name and address of each provider contracted with the seller.
7. The name and address of a custodian of preneed records.
8. Authorization for the Board to conduct an audit and/or an examination of books and records.
9. Any other information deemed necessary by the Board by rule.

**ANNUAL REPORT REQUIREMENTS
FOR TRUST-FUNDED PRENEED CONTRACT SELLERS**

The Working Group approved the following consensus recommendations: Annual reports filed by sellers offering trust-funded preneed plans should also include:

(The following should be certified as true and accurate by a corporate office of the trustee.)

1. The name and address of the financial institution where the trust is held and the account number;
2. The trust fund balance as reported in the previous year's report and the current trust fund balance.
3. Principal contributions received since the last report.
4. Total trust earnings and total distributions to the seller since the last report.

! Comments: APS objected to disclosing the trust earnings on the grounds that company profits should not have to be reported. APS remarked that other businesses are not required to disclose this confidential information.

5. Total expenses since the last report, excluding distributions to the seller.
6. A statement of assets and investments of the trust listing cash, real or personal property, stocks, bonds, and other assets. The listing should show cost, acquisition date and current market value of each asset and investment.

! Comments: APS objected to identifying the assets and investments of the trust. However, this information would assist the Board in its regulatory functions and could be vital to determining whether an examination or audit may be necessary. Additionally, accurate reporting of assets/investments from the trustee would help to ensure the solvency of the trust and to ensure that funds are being appropriately invested (i.e.- products such as term life insurance are not being purchased).

ANNUAL REPORT REQUIREMENTS FOR JOINT-ACCOUNT FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed by sellers offering joint-account funded preneed plans should also include:

(The following should be certified as true and accurate by a corporate officer of the financial institution.)

1. The number and address of the Missouri financial institution where the joint account is held and the account number.
2. The amount on deposit in each joint account.
3. The joint account balance reported the previous year.
4. Principal contributions placed into each joint account since the last report.
5. Total earnings since the previous report.
6. Total distributions to the seller from each joint account since the previous year.
7. Total expenses deducted from the joint account since the last report, excluding distributions to the seller.

! Comments: Stalter Legal Services recommended that the annual report should be certified by the trust officer responsible for the account and not a corporate officer.

ADDITIONAL ANNUAL REPORT REQUIREMENTS FOR INSURER FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: The annual report for sellers offering insurance-funded preneed plans should also include:

1. The name and address of each insurer issuing insurance to fund a preneed contract during the preceding year.
2. The status and total death benefit and cash surrender value of each policy in force at the time of the report, if applicable. *(This should be certified as true and accurate by the insurer.)*

CONSUMER REPORTING/NOTIFICATIONS

The Working Group approved the following consensus recommendations:

- The Board should be granted rulemaking authority to establish consumer disclosure requirements related to portability, cancellation and purchaser refunds.
- Purchasers should be entitled to an annual report from the seller indicating the amount of funds paid by the purchaser during the reporting year and the name and address of the trustee.

! Comments: APS and Kutis Funeral Home objected to the annual report because administrative and mailing costs would be "extremely burdensome and cost prohibitive." APS objected to reporting payment information to a purchaser on a monthly or annual basis and instead supported reporting if requested by the purchaser.

- Purchasers should be provided a receipt for each payment made by or on behalf of the purchaser. The receipt should be provided by the person receiving the payment (i.e.- the seller, provider or the agent).

! Comments: Participants suggested that receipts could be provided by any means agreed to by the purchaser (i.e.- a handwritten or electronic receipt) and could be required monthly or at a longer interval. Meierhoffer Funeral Chapel indicated that a receipt should not be required if payments are made directly to the trustee because these transactions may be otherwise addressed under federal law.

Alternatively, MFDEA and Stalter Legal Services suggested that a receipt should only be required for cash payments. If payment is made by check or electronic transfer, the check or transfer acknowledgment should be sufficient. Stalter also indicated that the requirement would be redundant if all payments must pass through the trust and an annual statement is issued by the fiduciary.

APS objected to providing the purchaser any type of receipt because the requirement would be "extremely burdensome and cost prohibitive."

TERMINATION OF BUSINESS

The Board has experienced significant regulatory difficulty with ensuring that Missouri consumers are adequately protected when preneed providers and sellers cease doing business either voluntarily or involuntarily. As a result, the Working Group approved the following:

PRENEED SELLERS:

The Working Group approved the following consensus recommendations:

- The following notification/reporting requirements should be mandated for preneed sellers:
 - Notice to the Board at least thirty (30) days prior to a seller ceasing business or transferring a majority of its stock/assets.
 - A final annual report filed with the Board which includes a detailed plan indicating how outstanding preneed contracts will be filled and/or satisfied and how assets will be allocated for preneed obligations.
 - Notice to all providers that the seller has ceased doing business thirty (30) days prior to the seller ceasing business or transferring a majority of stock/assets or, in instances of a sale/transfer, within thirty (30) days after completion of the sale/transfer.
 - Notice to consumers that the seller will cease doing business. The notice should include a contact number for questions. Notification should be required at least thirty (30) days prior to ceasing business or, in instances of a sale/transfer, within thirty (30) days after completion of the sale/transfer.
 - Submission of any additional information designated by the Board.
- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the seller to ensure contractual obligations are met.
- The Attorney General should have authority to enter the premises and access/take possession of the books and records of any preneed seller who ceases business without notification to the Board.

PRENEED PROVIDERS:

The Working Group approved the following consensus recommendations:

- The following notification/reporting requirements should be mandated for preneed providers:
 - Notice to the Board at least thirty (30) days prior to the provider ceasing business or transferring a majority of its stock/assets.
 - A final annual report filed with the Board.
 - Notice of the provider's intent to all sellers with whom the provider has outstanding preneed contracts within thirty (30) days prior to the provider ceasing business or, in instances of a sale/transfer of a majority of stocks/assets, within thirty (30) days after the sale/transfer.
 - Upon notification from the providers, sellers should be required to notify all purchasers that the provider has ceased doing business. Notification should include provisions for selecting an alternative provider and should be provided within thirty (30) days after the provider ceasing business.

! Comments: APS commented that it would be "extremely burdensome" for the seller to notify purchasers and suggested that providers and the Board should be responsible for the notification. It should be noted, however, that APS opposed providing purchaser information to the Board in the seller's annual report. Further, providers have reported that the seller would have the most current and accurate listing of outstanding preneed contracts.

Alternatively, Meierhoffer Funeral Chapel objected to notifying the purchaser of the provisions for selecting an alternative provider if the original provider ceases business.

- Submission of any additional information designated by the Board.
- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider to ensure contractual obligations are met.
- The Attorney General should have authority to enter the premises and access/take possession of the books and records any preneed provider who ceases business without notification to the Board.

AUDITS, INVESTIGATIONS AND EXAMINATIONS

The Working Group unanimously agreed that effective regulation of the preneed industry may only be accomplished by strengthening, clarifying and expanding the current investigation, examination and audit authority of the Board.

The Working Group unanimously recommended the following:

- The Board should be granted clear authority to:
 - Issue subpoenas to compel the production of preneed books and records of any licensee or trustee.
 - Enter the premises or establishment where preneed business is conducted, or is advertised to be conducted, for the purposes of accessing books and records.
 - Conduct random or targeted inspections, with or without cause and at the discretion of the Board.
 - Investigate complaints and to investigate licensees to determine compliance with Chapter 436.
 - Conduct random or targeted examinations of preneed books and records, at the discretion of the Board. The Board should be authorized to conduct an examination of each preneed seller at least once every five years.

! Comments: *Although the Working Group initially recommended every three years, the Board expressed concerns regarding cost and the financial feasibility of conducting such examinations.*

- Sellers solely issuing joint-account funded plans should be exempt from the examinations conducted by the Board every five years. However, the Board should retain authority to audit or examine the seller, if deemed necessary.
- Audit a preneed seller with cause if the Board has reasonable grounds for verifying the proper handling of preneed funds.
- Inspections, investigations, audits and examinations should be authorized with or without a complaint.
- The Board may request DIFP, the attorney general or the division of finance to designate investigator(s) or financial examiner(s) to assist the Board with any inspection, investigation, examination or audit.
- Preneed licensees should clearly be required to cooperate with any inspection, investigation, examination or audit conducted by the Board, DIFP, the attorney general or the division of finance.
- The preneed books and records of licensees should be made available to the Board upon request.

! Comments: *Stalter Legal Services indicated the Board's review should be limited to preneed books and records and should not encompass all of the seller's books and records.*

- Costs of an inspection, investigation, examination or audit should be funded through licensing fees and/or fees on preneed contracts as established by the Board by rule.

! Comments: *The Working Group unanimously agreed that examination/audit costs should not be charged to the licensee. Depending on the scope of the audit/examination, costs may be excessive and would be difficult to determine prior to the audit/exam. As a result, charging costs to licensees may have an overwhelming impact and could potentially result in licensee bankruptcies.*

ATTORNEY GENERAL AUTHORITY

The Working Group unanimously recommended the following:

If a violation of Chapter 436 is found after an investigation, audit or examination, the Attorney General should be authorized to initiate a judicial proceeding to:

- Declare rights.
- Approve a nonjudicial settlement.
- Appoint or remove a trustee.

- Interpret or construe the terms of the trust.
- Determine the validity of a trust or its terms.
- Compel a trustee to report or make an accounting.
- Enjoin a trustee from performing a particular act or to grant the trustee any necessary or desirable power.
- Review the actions of the trustee, including the exercise of any discretionary power.
- Determine trustee liability and to grant any available remedy for breach of a trust.
- Approve employment and compensation of agents.
- Determine the propriety of investments.
- Determine the timing and quantity of distributions and disposition of assets.
- Utilize any other power vested in the attorney general.

NOTE FOR WORKING GROUP: The Division of Finance suggested further review of this provision.

! Comments: MFDEA recommended that any legislation should clearly provide that liability, remedies and injunctions should be determined by a court and not the Attorney General. Alternatively, Stalter Legal Services also suggested that Missouri should consider a preneed reporting system that provides a grading of a sellers' compliance with preneed law, as currently employed by the Texas Department of Banking. Stalter commented that the industry and consumers should be afforded transparency with regard to preneed compliance or regulators will continue to bear full responsibility for identifying and addressing potential abuses.

DISCIPLINARY AUTHORITY

The Working Group unanimously agreed that to effectively regulate Chapter 436, the Board's disciplinary process must be streamlined to allow for a more efficient and effective remedy. This would necessarily include expanding the current grounds for discipline as well as the disciplinary tools available to the Board.

The Working Group unanimously recommended the following legislative change:

Section A.1. The board may refuse to issue any certificate of registration or authority, permit or license required under this chapter 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 or her 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 holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license 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 licensed or regulated by this chapter;

(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 reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled substance, 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;

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued under this chapter or in obtaining permission to take any examination given or required under this chapter;

(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 any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of sections 436 regulating preneed, or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person to use his or her certificate of registration or authority, permit, license or diploma from any school;

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter granted by another 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;

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by the provisions of Chapter 436 regulating preneed who is not registered and currently eligible to practice thereunder;

(12) Issuance of a certificate of registration or authority, permit or license based upon a material mistake of fact;

(13) Failure to display a valid certificate or license if so required by this the provisions of Chapter 436 regulating preneed or any rule promulgated thereunder;

(14) Violation of any professional trust or confidence;

(15) Making or filing any report required by the provisions of Chapter 436 regulating preneed which the licensee knows to be false or knowingly failing to make or file a report required by the provisions of Chapter 436 regulating preneed;

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

(19) Willfully and through undue influence selling a preneed contract.

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 of this section, 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, certificate, or permit.

4. Notwithstanding any other provision of this section, the board may automatically suspend a license if the Board finds, after an inspection, examination, investigation or audit, a shortage in any preneed trust or joint account which exceeds 20% of the total amount required to be held or deposited in the trust or account pursuant to the provisions of Chapter 436 regulating preneed.

5. Any person whose license is 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 pursuant to Chapter 621.

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.

ENFORCEMENT AUTHORITY

INJUNCTIVE/CIVIL AUTHORITY

The Working Group unanimously recommended the following:

- Similar to current law, the Board should have authority to seek injunctive relief or any other civil authority necessary to enjoin/restrain an entity from:
 - Unlicensed activity.
 - Engaging in any activity that would pose a substantial probability of danger to the public health, safety or welfare.

- o Engaging in any activity that presents a substantial probability of serious danger to the solvency of any preneed seller.
- The authority granted to the Board should be in addition to any other remedies authorized by law.
- Proper venue for an injunctive action should include Cole County.
- Violation of Chapter 436 should be deemed violations of Chapter 407, under the jurisdiction of the Attorney General. In actions brought under Chapter 407, the court should be authorized to impose any penalty/remedy authorized under Chapter 436 or 407, including, revocation/suspension of the preneed license.

CRIMINAL AUTHORITY

The Working Group unanimously recommended the following:

- Knowing and willful violations of Chapter 436 by incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty should be deemed Class C felonies. *Comment: Violations are currently Class D felonies.*

FINES & CIVIL PENALTIES

The Working Group unanimously recommended the following:

- The Board should be authorized to impose civil penalties and fines as a form of discipline.
- Fines/Civil Penalties should be assessed in light of the seriousness of the violation and should be consistent with the fines/penalties currently authorized for other professions within the Division. Specifically, the legislature has approved civil penalties for the Real Estate Commission and Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects in a maximum amount of two thousand five hundred dollars for each offense.
- In considering a fine/civil penalty, the Board should be required to consider, among other factors, :
 - (1) If the violations are likely to continue or reoccur;
 - (2) Whether actual financial loss was sustained by consumers and if restitution has been made;
 - (3) If the violation was detected as part of a self-audit or internal compliance program and immediately reported to the Board; and
 - (4) If the violation had previously been detected, but inadequate policies and procedures were implemented to prevent reoccurrence.

! Comments: *Currently, the Attorney General also has authority to assess/request fines and penalties under Chapter 407. A concern was raised by MFDEA that preneed licensees may be subjected to double penalties if an action is initiated by the Board as well as through the Attorney General's Office. MFDEA and Meierhoffer suggested that if accepted, language should be developed to prevent duplicate imposition of fines/penalties by the Board and the Attorney General's Office for the same conduct.*

Response: *As litigation counsel for the Board, the Attorney General's Office traditionally represents and coordinates with the Board in pursuing any remedy. Additionally, the remedies imposed by the Board and by the Attorney General's Office are distinctly different. The remedies imposed by the Board would be limited to licensing violations only. The remedies authorized under Chapter 407 are to redress/remedy a harm inflicted on the public at large. A concern was raised that if a licensee's conduct violates the licensing law as well as harms the public, expanded remedies would be appropriate.*

FEES

The Working Group approved the following unanimous recommendations: The proposed recommendations would increase costs and require additional funding for the Board. Accordingly, the Working Group recommended the following:

1. The Board should be authorized to establish licensing and renewal fees by rule. Fees should be set at a rate sufficient to cover administration and any related costs. However, preneed agent licensing fees should be minimal and proportionately lower than preneed seller/providers.
2. Preneed sellers should continue to be assessed a minimum fee of two-dollars per preneed contract sold during the annual reporting year, as currently required. However, the Board should be authorized to adjust the fee by rule to pay for auditing, examination and investigation/inspection costs.

CONCLUSION

Nationally, the preneed industry has experienced significant and sustained growth as consumers focus more attention on their final needs. Preneed arrangements can provide a valuable option to purchasers desiring to ensure their arrangements. Chapter 436 regulating preneed is in need of significant legislative changes. As reflected in the present crisis, Chapter 436 must be enhanced and amended to ensure consumer protection and the continued viability of Missouri's preneed industry.

The Working Group appreciates the opportunity to share its recommendations. We look forward to providing any further assistance.

Public Suggestions/Proposals

Chairman Reinhard verified that all 436 Committee Members and the public attending were provided materials for today's meeting. All recommendations and comments are provided in PDF format on the Board's website under meeting postings, and will be maintained as a part of the meeting minutes.

Chapter 436 Draft 090308 Replacement
Recommendations – MFDEA
Recommendations – Meierhoffer
Recommendations – Kutis
Recommendations – Finance
Recommendations – APS
Comments – Moore Funeral Home

After revisions are completed, a Final Recommendation from the Chapter 436 Review Committee will be submitted to the Joint Committee as the final product.

Director Broeker advised the Chapter 436 Review Committee and public in attendance that the Joint Committee on Preneed Funeral Contracts would be meeting Tuesday, September 9, 2008 at 10:00 a.m. in the Senate Lounge. Testimony will be limited to the Chapter 436 Roundtable Group and the Guaranteed Association. NO PUBLIC TESTIMONY will be heard during this hearing. Public testimony will be scheduled at a later date. Director Broeker thanked everyone on behalf of the Division, Board and Department, for their time and dedication to the Chapter 436 Review Committee Meetings.

Adjournment

A motion was made by John McCulloch and seconded by Gary Fraker to adjourn. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, and John McCulloch voting in favor with no votes in opposition. Joy Gerstein was absent from the entire meeting. The meeting adjourned at 12:50 p.m. on Thursday, September 4, 2008.

Executive Director: _____

Approved by the Board on: _____

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

September 8, 2008 – 5:00 p.m.
Division of Professional Registration
3605 Missouri Blvd.
Jefferson City, Missouri

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order via conference call by James Reinhard, Chairman, at 5:00 p.m. on Monday, September 8, 2008, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Board Members Present

James Reinhard, Chairman
Martin Vernon, Vice-President
Gary Fraker, Secretary
Daniel (Todd) Mahn, Member
John McCulloch, Member
Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Tabatha Lenzini, Licensure Technician
Kimberly Grinston, Board's Legal Counsel – via conference call

Public Present

David Broeker, Director of Division of Professional Registration
Connie Clarkston, Director of Budget & Legislation
Chris Moody, Lobbyist representing SCI
Darlene Russell, CFL Preneed
Brad Speaks, Consumers Funeral Assurance and Speaks
Don Otto, MFDEA/MFT

Public attending via conference call included the following

John Moore
Michael Meierhoffer
Josh Slocum, Funeral Consumers Alliance
Sharon Euler, Assistant Attorney General
Bill Stalter
William Stuart
Rodney Gray, Hendren and Andrae
Gideon Richardson
Robert Brown
Representative Timothy Meadows

The board met to discuss the final draft of the 436 document that had been prepared by the 436 Working Group, as well as record any additional comments or changes that needed to

be submitted prior to the Division providing the 436 Working Document to the Joint Committee on Preneed Funeral Contracts at the September 9, 2008 Hearing at the Capitol.

Josh Slocum, Funeral Consumers Alliance, expressed his concern with regard to the board's position of 100% trusting and up to 20% expenses through contracting.

A motion was made by Todd Mahn, and seconded by Gary Fraker to recommend 100% trusting requirements, no administrative expenses and no trustee fees, to the Joint Committee. Motion carried with James Reinhard, Gary Fraker, Todd Mahn, and Joy Gerstein voting in favor with John McCulloch and Martin Vernon voting in opposition.

The board discussed Portability, and maintained the position as was previously taken with 100% portability plus 1% minimal paid in interest cap.

A motion was made by Gary Fraker and seconded by Todd Mahn to recommend 100% Cancellation requirement, no matter when the contract is cancelled. Motion carried with James Reinhard, Martin Vernon, Gary Fraker, Todd Mahn, and Joy Gerstein voting in favor with John McCulloch voting in opposition.

Don Otto, on behalf of Missouri Funeral Directors and Embalmers Association and Missouri Funeral Trust, as well as Brad Speaks, on behalf of Consumers Funeral Assurance, expressed opposition to this change in position. John Moore expressed his support of the board's position.

Representative Timothy Meadows expressed his support of the board's position on the 100% trusting with no administrative fees and again expressed his appreciation to the Department, Division, Board, and 436 Working Group for their time and dedication on this project.

Adjournment

A motion was made by Gary Fraker and seconded by Todd Mahn to adjourn. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition. The meeting adjourned at 6:30 pm on Monday, September 8, 2008.

Executive Director: _____

Approved by the Board on: _____

Open Minutes
Missouri State Board of Embalmers
and Funeral Directors
September 23, 2008
3605 Missouri Boulevard, Suite 370
Jefferson City, Missouri

MAIL BALLOT

Board Members

James Reinhard, Chairman
Martin Vernon, Vice-Chairman
Gary Fraker, Secretary
Daniel T. Mahn, Member
John McCulloch, Member
Joy Gerstein, Public Member

Closed Session

The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney.

Executive Director _____

Approved by Board on _____

Open Minutes
Missouri State Board of Embalmers
and Funeral Directors
October 14, 2008
3605 Missouri Boulevard, Suite 370
Jefferson City, Missouri

MAIL BALLOT

Board Members

James Reinhard, Chairman
Martin Vernon, Vice-Chairman
Gary Fraker, Secretary
Daniel T. Mahn, Member
John McCulloch, Member
Joy Gerstein, Public Member

Closed Session

The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney.

Executive Director _____

Approved by Board on _____

Board of Embalmers Financial Statement - FY 2009 as of September 30, 2008			
	Year-To-Date	Projected	Remaining
FY 2009 Beginning Fund Balance	1,499,792.36		
Revenue	39,604.99	0.00	(39,604.99)
Expense and Equipment	49,627.94	0.00	(49,627.94)
Total Transfers	117,624.06	0.00	(117,624.06)
Ending Fund Balance	1,372,145.35		

FY 2009 OA Cost Allocation					
Board Cost:					
OA Expenditures	Auditor Expenditures	Governor Expenditures	Lt. Governor Expenditures	Sec of State Expenditures	
\$585.00	\$0.00	\$130.00	\$25.00	\$567.00	
Atty General Expenditures	Gen Assembly Expenditures	Capitol Police	DOR Receipts		Total
\$0.00	\$1,804.00	\$81.00	\$654.00		\$3,846.00

FY 2009 OA Cost Allocation					
Division Cost:					
OA Expenditures	Auditor Expenditures	Governor Expenditures	Lt. Governor Expenditures	Sec of State Expenditures	
\$88.19	\$0.00	\$19.63	\$3.84	\$85.48	
Atty General Expenditures	Gen Assembly Expenditures	Capitol Police	DOR Receipts		Total
\$0.00	\$272.13	\$12.24	\$0.00		\$481.51

FY 2009 Total Cost:					\$4,327.51
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ANNUAL REPORT INFORMATION

YEAR	CONTRACTS SOLD	FACE VALUE
1983	16,227	\$32,694,588.98
1984	20,905	\$44,438,618.37
1985	23,847	\$64,873,352.86
1986	21,151	\$51,075,938.09
1987	20,478	\$50,525,988.62
1988	16,614	\$45,147,410.07
1989	99,577	\$54,011,095.40
1990	23,078	\$66,009,374.82
1991	27,044	\$86,959,425.41
1992	23,261	\$723,88,853.64
1993	23,714	\$79,605,742.77
1994	24,487	\$80,388,724.28
1995	22,309	\$74,544,659.49
1996	23,613	\$85,052,696.04
1997	29,793	\$100,032,142.57
1998	25,049	\$82,602,025.85
1999	30,029	\$102,847,472.25
2000	25,931	\$94,315,979.21
2001	23,632	\$84,689,862.48
2002	24,155	\$93,370,759.78
2003	22,692	\$90,690,720.77
2004	24,180	\$97,852,248.66
2005	23,302	\$98,057,066.66
2006	21,876	\$95,291,060.03
2007	29,749	\$115,928,709.34
2008	17,186	\$76,323,952.83

Embalmers not renewed

71

Funeral Directors not renewed

163

Funeral Director licenses pending suspension January 3, 2009

13

Embalmer licenses pending suspension January 3, 2009

14

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Matt Blunt, Governor • Doyle Childers, Director

www.dnr.mo.gov

October 21, 2008

Ms. Lori Hayes
Funeral Establishment Inspector
State Board of Embalmers and Funeral Directors
P.O. Box 423
Jefferson City, MO 65102

RECEIVED

OCT 27 2008

STATE BOARD OFFICE

000362 OCT 27 2008

Dear Ms. Hayes:

As requested, the Public Drinking Water Branch (PDWB) is providing you with information to clarify the need and requirement for a state approved backflow prevention assembly on funeral homes, morgues, mortuaries, etc.

The level of protection and the type of approved backflow prevention device required for a facility, home, business, etc. is dependent upon the level of backflow hazard present that could allow a contaminant or source of pollutant into the potable public water system either through backsiphonage or backpressure.

There are two Classes of backflow hazards defined in Missouri Safe Drinking Water Regulations 10 CSR 60-11. A Class I backflow hazard is one that presents an actual or potential hazard to customers of the public water system should backflow occur. A Class II backflow hazard is one that threatens to degrade the water quality of the public water system should backflow occur. You may visit our website for a summary of backflow prevention regulations, basics of backflow prevention, frequently asked questions and other helpful information at www.dnr.mo.gov/env/wpp/backflow. I've included some helpful information (copy enclosed) with this letter.

Missouri Safe Drinking Water Regulation 10 CSR 60-11.010(3)(A)2. provides a list, not all inclusive, of actual or potential Class I and Class II backflow hazards. Hospitals, clinics, medical buildings, autopsy facilities, morgues, mortuaries, veterinary clinics, dental clinics, and other medical facilities are just some of the very few facilities identified in the regulation as an actual or potential Class I hazard.

A Class I Backflow Hazard (morgues, mortuaries, labs, boiler systems, pressurized heating/cooling systems, chilled water systems, fire sprinkler systems, etc.) requires installation of a reduced pressure principle backflow prevention assembly on the customer service line or construction of a department-approved air-gap in accordance with 10 CSR 60-11(4) and (5) of the rule. A Class II Backflow Hazard (sprinkler systems without chemical additives, irrigation

Ms. Lori Hayes
October 21, 2008
Page 2

systems without chemical injection facilities, etc.) requires installation of a department-approved double check valve assembly on the customer service line. A list of department approved backflow prevention assemblies may be found at our website at www.dnr.mo.gov/env/wpp/backflow.

In addition to the list of potential hazards defined in the regulations, the supplier of water or local governmental agency may require protection from an actual or potential backflow hazard identified at any facility. The supplier of water may have written procedures that are more stringent than the provisions of the rule, but in no case can they be less stringent than the rule. In fact, some water suppliers may require a device on all commercial facilities even if the hazard is not currently present.

If you have any questions or concerns, please do not hesitate to contact me at (573) 751-4594.
Thank you.

Sincerely,

WATER PROTECTION PROGRAM



Deana L. Cash, Environmental Engineer
Backflow Prevention State Coordinator
Public Drinking Water Branch

DLC:jb

Enclosure

RECEIVED

OCT 27 2008



Missouri Department of Natural Resources

STATE BOARD OFFICE

Basics of Backflow Prevention: Missouri Regulation 10 CSR 60-11.010-.030

Water Protection Program fact sheet

1/2008

Backflow Prevention

In 1997, the Missouri Department of Natural Resources revised a drinking water regulation entitled "Backflow Prevention." This revised regulation places certain responsibilities on water suppliers to ensure that customer facilities identified as actual or potential backflow hazards provide the necessary protection to prevent contaminants from entering the public water system.

What is Backflow?

Backflow is defined as the unwanted reversal of flow in a water distribution system. Due to changes in the hydraulic pressure in a water distribution system or a piping system inside a customer's premises, backflow occurs on a regular basis.

The polluting substance, usually a liquid, tends to enter the potable water supply if the net force acting upon the liquid acts in the direction of the water supply. Therefore, two factors are essential for backflow to occur. First, the normal direction of flow in the distribution system must be interrupted. Second, there must be a link or connection between the potable system and the source of contamination.

Backflow only becomes a serious problem when there are cross connections within the water distributions system.

Public Health Significance of Cross Connections

A cross connection is a physical link between a source of pollution or contamination with a potable water supply.

Public health specialists have long been aware of the threat to public health posed by cross connections. Education is the most important factor in cross connection control. No one would intentionally connect plumbing fixtures, equipment, etc. to their water supply if they knew it would contaminate their drinking water. But it happens thousands of times a day.

Various court decisions have held water suppliers responsible for the delivery of safe water to consumers. But the safety of our drinking water supply can be jeopardized at any location, at any time because of the frequency of plumbing defects and cross connections. Due to frequent changes in piping systems, an effective cross connection control program, including continued surveillance of the public water system, is necessary to prevent backflow incidents.

Components of an Effective Cross Connection Control Program

The first step in preventing backflow incidents is enacting local rules that grant the water supplier the authority to enforce the cross connection control program. For the water supplier to comply with the state backflow prevention regulation, the local rules should include the following provisions:

- A requirement for annual testing of assemblies and inspection of air-gaps.
- Authority to enter customer premises for purposes of inspection.
- Authority to terminate water service for failure to comply.

Another responsibility of the water supplier is to notify customers, where backflow hazards exist, that they must comply with the local rule. Once these customers have been notified, the supplier must maintain records of inspections, exemptions, or installation of assemblies.

A local program may not be less stringent than state regulations. Local plumbing codes may require additional backflow prevention devices.

Methods of Backflow Prevention

The department's Public Drinking Water Branch maintains a list of backflow prevention assemblies approved by the Foundation for Cross Connection Control and Hydraulic Research at the University of Southern California www.usc.edu/dept/fccchr/. The following methods of backflow prevention meet the requirements of the state backflow prevention rule.

Air-gap: An air-gap is the most positive method of backflow protection. It is a physical separation between the water supply and the customer's internal piping system. The distance for an air-gap must be at least two times the diameter of the pipe. For example, a two-inch separation is required for a one-inch water supply pipe.

Reduced Pressure Principle Assembly: A reduced pressure principle assembly is the highest level of mechanical backflow protection. The reduced pressure principle assembly has a hydraulically operated relief port located between two spring loaded check valves. A drop in pressure from the supply or an increase in back pressure from the customer's facility will cause the check valves to close and the relief port to open, creating an air-gap within the assembly. If either check valve becomes fouled by debris, the relief port will also open. The drawback to using an reduced pressure principle assembly is that it will lower the pressure available to the customer's premises.

Double Check Valve Assembly: The double check valve assembly is designed for low hazard protection only. The double check valve assembly has two spring valves that act independently to provide protection from back pressure and back siphonage. The drawback to double check valve assemblies is that both check valves are susceptible to fouling by debris in the water system, which hinders their function and allows backflow to occur.

Testing/Inspection Requirements

The function of all backflow prevention devices must be reviewed annually. Air-gaps may be inspected by the water supplier. A state-certified backflow prevention assembly tester must perform the specific testing procedures required to verify the proper function of reduced pressure principle assemblies and double check valve assemblies.

The Public Drinking Water Branch maintains a list of certified backflow prevention assembly testers.

For Additional Assistance

Please contact your local Regional Office for more information.

Public Drinking Water Branch	(573) 751-5331
Northeast Region Office	(660) 385-8000
Southwest Region Office	(417) 891-4300
Southeast Region Office	(573) 840-9750
Kansas City Region Office	(816) 622-7000
St. Louis Region Office	(314) 416-2960

For more information

Missouri Department of Natural Resources
Water Protection Program, Public Drinking Water Branch
P.O. Box 176
Jefferson City, MO 65102-0176
1-800-361-4827 or (573) 751-5331 office,
(573) 751-3110 fax
www.dnr.mo.gov/env/wpp/index.html

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OCT 27 2008
STATE BOARD OFFICE

2009

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