OPEN MEETING MINUTES
Missouri State Board of Embalmers and Funeral Directors

August 4-5, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Tuesday, August 4, 2009 – 12:00 p.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by Martin Vernon, Chairman, at 12:00 p.m. on Tuesday, August 4, 2009, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

BOARD MEMBERS PRESENT:
Martin Vernon, Chairman
Todd Mahn, Secretary
John McCulloch, Member

BOARD MEMBERS ABSENT:
James Reinhard, Member
Gary Fraker, Vice-Chairman
Joy Gerstein, Public Member

STAFF PRESENT:
Becky Dunn, Executive Director
Lori Hayes, Inspector
Don Eggen, Chief Investigator

CLOSED SESSION
Motion was made by John McCulloch 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 Section 324.001.8 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 324.001.9 RSMo 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 324.001.8 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. Motion carried with Martin Vernon, Todd Mahn and John McCulloch voting in favor with no votes in opposition. James Reinhard was absent for this portion of the meeting. Gary Fraker and Joy Gerstein were absent from the meeting in its entirety.

Wednesday, August 5, 2009 – 9:23 a.m.

The Missouri State Board of Embalmers and Funeral Directors reconvened in open session at approximately 9:23 a.m. on Wednesday, August 5, 2009. The meeting was called to order by Martin Vernon, Chairman, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

BOARD MEMBERS PRESENT:
Martin Vernon, Chairman
Todd Mahn, Secretary
James Reinhard, Member
John McCulloch, Member

BOARD MEMBERS ABSENT:
Gary Fraker, Vice-Chairman
Joy Gerstein, Public Member

STAFF PRESENT:
Becky Dunn, Executive Director
Lori Hayes, Inspector
Tabatha Lenzini, Licensure Technician
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General
Connie Clarkston, Director of Budget and Legislation
Darcie Rehagen, Office Support Assistant
Don Eggen, Chief Investigator

GUESTS PRESENT:
Mark Warren, Inglish & Monaco/Missouri Preneed Coalition
Bill Stalter, Stalter Legal Services
Chris Moody, SCI
Jim Moody, SCI
Representative Tim Meadows, self
Don Otto, MFDEA
Brad Speaks, Speaks Funeral Home

APPROVAL OF THE AGENDA

Motion was made by Jim Reinhard and seconded by John McCulloch to approve the open agenda as submitted. Motion carried with Todd Mahn, John McCulloch, and Jim Reinhard voting in favor with no votes in opposition. Gary Fraker and Joy Gerstein were absent from the meeting in its entirety.

EXECUTIVE DIRECTOR REPORT

Becky Dunn, Executive Director, gave an overview of the rules for the meeting and informed the audience that any comments for upcoming meetings need to be submitted in writing to the Board office by the Friday prior to the next meeting date. Ms. Dunn also informed the Board that the website has been updated with SB1 comments from the public and legal counsel.

ASSISTANT ATTORNEY GENERAL REPORT

Sharon Euler, Assistant Attorney General, reported that the NPS claim packets have been mailed out and it appears as though some people who do not have NPS contracts are receiving the packets. Ms. Euler spoke with Chris Fuller, attorney with the Special Deputy Receiver's (SDR) office, who indicated that everyone in the company's database was mailed a packet and any questions should be directed to the SDR's office.

FUTURE MEETING DATES

Ms. Dunn informed the audience of the Board's upcoming meeting dates, which are as follows:

- August 11, 2009, 9:00 a.m.
- August 19, 2009, 9:00 a.m.
- August 25, 2009, 9:00 a.m.
- September 2, 2009, 9:00 a.m.

MID-AMERICA TRANSPLANT SERVICES

The Board reviewed a letter from Mid-America Transplant Services regarding some of its new harvesting procedures. This was provided for informational purposes only. Chairman Vernon advised that it is his belief this mailing was sent to all funeral homes by Mid-America Transplant Services.

SENATE BILL 1 IMPLEMENTATION PROCESS

The Board reviewed the public's comments pertaining to Senate Bill 1, and discussion was held. A court reporter was present and recorded the discussion. The transcript is a permanent part of the record and as such a summary of the discussion is not made a part of the official minutes of this meeting.

It was the decision of the Board to draft rules for the following sections for clarity for review at a subsequent meeting:

- 333.011
- 333.091
- 333.315

- 333.320
- 333.325
- 333.330
- 333.335
- 333.340

CLOSED SESSION

Motion was made by Todd Mahn and seconded by John McCulloch 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 Section 324.001.8 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 324.001.9 RSMo 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 324.001.8 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. Motion carried with Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Gary Fraker and Joy Gerstein were absent from the meeting in its entirety.

RECONVENE

The Board reconvened in open session at approximately 1:30 p.m.

SENATE BILL 1 IMPLEMENTATION PROCESS - CONTINUED

The Board continued its review of the public's comments pertaining to Senate Bill 1, and discussion was held. A court reporter was present and recorded the discussion. The transcript is a permanent part of the record and as such a summary of the discussion is not made a part of the official minutes of this meeting.

ADJOURNMENT

A motion was made by Todd Mahn and seconded by John McCulloch to adjourn. Motion carried with Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. The meeting adjourned at 2:53 p.m. on Wednesday, August 5, 2009. Gary Fraker and Joy Gerstein were absent from the meeting in its entirety.

Executive Director: Sandy Sebastian

Approved by the Board on: 6/14-16/10

RECEIVED
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STATE BOARD OFFICE

ORIGINAL

MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

TRANSCRIPTION OF MEETING

DIVISION OF PROFESSIONAL REGISTRATION
3605 MISSOURI BOULEVARD
JEFFERSON CITY, MISSOURI

AUGUST 5, 2009
9:20 A.M. - 2:55 P.M.

CHAIRMAN: I want to thank everybody for showing up and being here. We had a great meeting last week and, hopefully, this week follows suite with that and flows just as smooth and we get a lot accomplished, so glad that everybody is here. So, the meeting is called to order. Roll call: Board Members, Jim Reinhard?

MR. REINHARD: Here.

CHAIRMAN: I'm here. Gary Fraker?

MS. DUNN: Absent.

CHAIRMAN: Absent. Todd Mahn?

MR. MAHN: Here.

CHAIRMAN: Joy Gerstein? John McCulloch?

MR. McCULLOCH: Here.

CHAIRMAN: All right. So, staff present, Becky Dunn?

MS. DUNN: Yes.

CHAIRMAN: Inspector Lori Hayes?

MS. HAYES: Here.

CHAIRMAN: Who else is on there?

MS. DUNN: Tab.

CHAIRMAN: Tab? There's Tab; she started to go out the door.

1 MS. DUNN: Earl Kraus.
2 CHAIRMAN: Earl, right here, our
3 assistant, and Sharon, our assistant. I'm
4 sorry about that. Senior legal counsel for
5 the Division, I'm looking at the paper, and
6 assistant attorney general and Connie
7 Clarkston. Hi, Connie.
8 MS. CLARKSTON: How are you?
9 CHAIRMAN: Good.
10 MS. EULER: And Don.
11 MS. DUNN: Don Eggen.
12 CHAIRMAN: And Don from CIU. I should
13 have just introduced the table instead of
14 looking at your list.
15 MS. DUNN: And Darcie.
16 CHAIRMAN: And Darcie. Hi, Darcie.
17 MS. REHAGEN: Hello.
18 CHAIRMAN: I don't know that I've met
19 Darcie. Have I met Darcie?
20 MS. REHAGEN: I do the rules for the
21 Division.
22 CHAIRMAN: All right.
23 MS. DUNN: Approval of the agenda.
24 CHAIRMAN: Need a motion for the
25 approval of the agenda for the day.

1 MR. REINHARD: So moved.
2 MR. McCULLOCH: Second.
3 CHAIRMAN: Second. Todd?
4 MR. MAHN: Yes.
5 MS. DUNN: Okay. If we could, just go
6 ahead and discuss the rules of the meeting,
7 and then we can have everybody introduce
8 themselves.
9 CHAIRMAN: Okay. Becky is going to
10 describe our ground rules for the day and she
11 has a couple of sidebars that need to be
12 addressed in that.
13 MS. DUNN: If anyone was here last
14 week, we have a court reporter present. It's
15 very important that we only speak one at a
16 time. Always stand up, identify yourself, who
17 you're with. If you do have side
18 conversations in the audience, if you could
19 step out, because we learned from last week
20 those conversations are picked up by the
21 recorders and they're hard to identify in
22 taking the minutes. So, again, if you would
23 identify yourself, who you're with, stand up,
24 we very much appreciate that. If you have
25 comments in writing, we appreciate those, as

1 well. And step up to the table as you talk.
2 Do you want to introduce the audience?
3 MS. EULER: Comments for next week, if
4 they could get them to you by Friday of this
5 week.
6 CHAIRMAN: Sharon is reminding if you
7 have comments for next week's discussion,
8 through that e-mail process or getting the
9 information so they can be addressed into the
10 criteria for discussion that week. So, does
11 everybody understand how that part of it
12 works? If you have -- yeah. They need those
13 by Friday if you want to submit comments so it
14 can be part of next week's discussion.
15 MS. DUNN: One other thing is we've
16 got on our front page of our Web site, we
17 have the Senate Bill implementation meetings,
18 and then we have any handouts that the staff
19 has prepared or our legal counsel, and then we
20 have a public-comment section. As you send
21 those to me, I'm getting those put on our Web
22 site, as well. That's the easiest and
23 quickest way that we can handle this. I know
24 we have short time frames. I apologize. I
25 know everyone is trying to get their comments

1 to me quickly. We got some from Stuart
2 Enterprises last night. I don't even know if
3 they're posted on our Web site yet, but I do
4 have them as a handout, and I will have them
5 posted to the Web site later today.
6 CHAIRMAN: Okay. We'll remind
7 everybody if you haven't signed in, we need
8 you to sign in. And on that note, let's go
9 around the outside of the room and everyone
10 tell us who you are. Start back there with
11 Bill. Bill Stalter with Stalter Legal
12 Services. Brad Speaks, Speaks Funeral Home.
13 Missouri State Representative Tim Meadows.
14 Don Otto, Missouri Funeral Directors and
15 Embalmers Association and Missouri Funeral
16 Trust. Mark Warren, Inglish & Monaco,
17 Jefferson City, Missouri Preneed Coalition.
18 Jim Moody, Moody & Associates, representing
19 SCI. Chris Moody, Moody & Associates,
20 representing SCI.
21 CHAIRMAN: All right. Again, glad
22 you're all here today. Before we get into the
23 actual discussion of the day, Sharon has a
24 quick comment that she would like to follow
25 with.

1 MS. EULER: I have two minutes. One,
2 I just want to let everybody know I've been
3 summoned to a meeting downtown and I need to
4 leave here in about five or ten minutes, and
5 then I will be back. It has nothing to do
6 with the Embalmers stuff or anything,
7 something totally unrelated, but when I get a
8 call from General Koster's office saying we
9 need you downtown, I need to go. So, I will
10 be back this afternoon. The second thing I
11 wanted to let everyone know, I know that there
12 have been a lot of phone calls generated with
13 the claim packets that have been sent out to
14 consumers, and we heard that some people who
15 do not have NPS contracts have received claim
16 packets. I spoke with Chris Fuller this
17 morning, who is the attorney for the SDR who
18 says that under Texas law, they are required
19 to send out claim packets to everybody who is
20 in the company database. So, that means there
21 may be some people in the database who never
22 -- who don't currently have NPS plans. I sent
23 Chris a couple examples and he is going to see
24 if he can get some more information to us.
25 So, if people are getting packets and they

1 don't have NPS plans, it's just because their
2 names were in the database somehow. Maybe
3 they had been contacted by a salesperson at
4 some point. Who knows? But they were in the
5 database, so it's nothing to get too upset
6 about. If people have that, have them call
7 the SDR and my understanding is that they tell
8 them I don't know why I'm getting this, I've
9 never had an NPS plan, then the
10 customer-service people are taking down their
11 name and contact information and sending those
12 up for somebody to investigate. That's all.
13 CHAIRMAN: Okay. All right. Thank
14 you very much. We also have Representative
15 Tim Meadows here with us this morning, and
16 we're very glad to have him with us, and Tim
17 has asked to address everyone here this
18 morning first.
19 REPRESENTATIVE MEADOWS: Well, thank
20 you very much, Mr. Chairman. I have a meeting
21 with the governor's office at 11:00, so I'll
22 be ducking out of here probably about 10:30.
23 But I missed your -- sorry I missed your last
24 meeting and I'm going to try to be a faithful
25 attender seeing as how I helped write the

1 Senate Bill 1 and some of the amendments to
2 that. With that being said, I know that there
3 was some discussion last week about some of
4 the issues with Senate Bill 1, and I just want
5 the Board to know that when I put that
6 amendment in about funeral directors being
7 audited, the reason why I did that -- and I'm
8 not picking on any Board member or any past
9 member of this Board. I feel that this --
10 your industry is one industry that has got to
11 prove themselves to a higher standard. You
12 are all held to a higher standard anyway by
13 virtue of the jobs that you do and by the
14 positions that you hold in your communities
15 back home. I've always said that. But I
16 wanted to make sure and I think that the Board
17 should have the opportunity, even though I say
18 funeral director or funeral-home owner, I
19 think that that could also be interpreted by
20 the Board as an employee of a firm as long as
21 that firm has been audited or has gone through
22 some type of audit, or at least turned in
23 financial or had it been looked at financially
24 by the State Board. That's what my
25 interpretation is. I feel all too often in

1 the past -- and, let's face it, NPS has
2 brought us to this situation of rewriting the
3 law. It was an antiquated law 32 years ago,
4 and I still feel it's antiquated. I know we
5 made some changes. Sometimes I -- will those
6 changes be for the good? I personally think
7 so, but I know there's some funeral directors
8 out there that are having heartburn over this,
9 and I don't mean to create problems for them,
10 but I feel that the Board should have the
11 opportunity to make those decisions when you
12 look at. I just want to make sure that
13 everyone passes through the eye of that
14 needle, and I believe that wholeheartedly
15 inside my heart. I think past Boards were
16 here, and I'm not passing judgment on them,
17 but I think a lot of things of the past, you
18 know, and the space that NPS operated in this
19 state for a long time and they were slapped
20 with things that they were supposed to do by
21 previous administrations, and they -- and for
22 whatever reason, that didn't get done. I'm
23 not pointing fingers at past board members,
24 but I think that we need to all hold ourselves
25 a little bit higher. If you want to be a

1 force and to serve on this Board, then you
2 should have that recognition as doing things
3 the right way. And I think others would look
4 up to you and respect you a whole lot more
5 knowing that you are -- that you have passed
6 through the eye of the needle and that you are
7 doing the right thing. So, I don't mean to
8 create hassles for everyone, but I will be
9 here as much as I can be here to voice my
10 opinion in regard to that, and that's the one
11 reason when we, as a legislature -- many in
12 the legislature talked about this, and
13 Representative Dixon, who had the other
14 amendment to increase the Board to ten people,
15 Representative Dixon and I spoke at length
16 about this very thing, and he wholeheartedly
17 supported that. And he said yes, he felt that
18 this was very important that that would on
19 there because then, that way, everyone that
20 serves on this Board is held to the higher
21 standard. So, I know it may cocreate problems
22 for many in your industry, but, again, I'm
23 very, very proud of the fact that we did what
24 we did. So -- and, of course, I'm hearing,
25 also, rumors that they're saying that this is

1 unconstitutional and they're going to try to
2 throw the whole bill out and there's this
3 massive thing going on right now to try to
4 tear this down. Why do that? This is -- you
5 know, this is the legislature trying to help
6 the consumers of the State of Missouri, and
7 that's what we are trying to do, and we all
8 know what our obligations are to our
9 communities back home and to the consumer.
10 So, I'll stand by that legislation and defend
11 it till the day that I die even though many
12 have some heartburn with it. I still think I
13 did the right thing. So, if anyone has any
14 questions, you can e-mail me, you can call me,
15 and I will also be here as much as I can
16 throughout this process, and I thank you for
17 the opportunity to speak before the Board
18 today.
19 CHAIRMAN: Thank you.
20 REPRESENTATIVE MEADOWS: All right.
21 CHAIRMAN: Appreciate that.
22 REPRESENTATIVE MEADOWS: I'll sit down
23 and shut up.
24 CHAIRMAN: All right. So, future
25 meeting dates, I'm just going to let Becky

1 expound on that.
2 MS. DUNN: Since we have some new
3 public visitors here today, I just wanted to
4 go over the meeting dates once again. Next
5 week, August 11th, 9:00 a.m.; August 19th,
6 9:00 a.m.; August 25th, 9:00 a.m.; September
7 2nd, 9:00 a.m. I'm trying to get meeting
8 rooms scheduled and postings done, and the
9 postings will be generic and the materials
10 that I get out to the e-mail group and to our
11 Web site will be more informative to you. Any
12 questions on that? Don? Okay.
13 MR. OTTO: Sounds good.
14 CHAIRMAN: This is just an FYI. The
15 Board was sent a letter by Mid-America
16 Transplant Services about some of their new
17 harvesting procedures and all of that.
18 Actually, every funeral home got a copy of it
19 because I got a copy of it in the mail
20 directly from Mid-America. I think we're just
21 acknowledging the fact that that was sent out
22 to members of the profession. Anybody that's
23 got a comment about that from the Board that
24 you want to make, fine, but I assume most of
25 you all may have seen that anyway, so -- okay.

1 Okay. All right. That kind of takes care of
2 the housekeeping rules, I guess, to some of
3 the beginning stuff. We'll start the process
4 again like we did last week. We had kind of
5 laid some ground rules that we were actually
6 going to hold comments to the end so we could
7 get things done so we weren't chasing rabbits
8 and shotgun effects splattering all over
9 everywhere with this. But, actually, we were
10 able to focus very well with the folks
11 participating, getting everyone's comments.
12 That's how we arrived at the comment section
13 of the rule with the sidebars over at the side
14 from the attorneys having the ability to look
15 at those questions and being able to address
16 those some. Worked very, very well. We were
17 able to stay focused on the specific that we
18 were talking about at the time and we took
19 lots of comments. We'll just say we're
20 getting started and we'll start with the group
21 #1 potential rules, and we kind of just used
22 the attorneys to -- they were the ones working
23 with that to kind of lead that, so I guess I
24 will turn it over to Mr. Kraus and say let's
25 start our format.

1 MR. KRAUS: All right. Well, as the
2 Chair was saying, we went through the various
3 sections in group #1. You'll notice, I think,
4 the handout that you have only goes through --
5 MS. DUNN: Is this the handout you're
6 referring to?
7 MR. KRAUS: Yes.
8 MS. DUNN: Okay. The first handout
9 he's looking at is the one that has the
10 comments written out on the edge.
11 MR. KRAUS: On the first page at the
12 top, it says Senate Bill 1, implementation,
13 group #1, and it has a bubble comment out to
14 the side on the right. And this group #1
15 consists of going through, I believe, the
16 sections that were in Senate Bill 1 with
17 regard to Chapter 333. And what we did is
18 took all the different comments that we
19 received, basically, before putting this up on
20 the Web site, so if you submitted some
21 comments after that, they won't be
22 incorporated in here, but I understand they're
23 in a separate handout. And the thoughts that
24 were brought up in prior meetings and in -- by
25 me, by Sharon, by Becky, by other Board

1 members, and by other folks who submitted
2 questions or comments, we tried to incorporate
3 those in here as a way to promote discussion
4 by the Board at this meeting as we march
5 through each section, basically going section
6 by section, and in some sections, line by
7 line, to, first and foremost, identify issues
8 that will need to be addressed by rule,
9 particularly if it needs to be addressed by
10 emergency rule, and, to some extent,
11 discussion conceptwise as to what those rules
12 should cover and comprise. And then we'll
13 take -- we, meaning staff and counsel -- will
14 take that discussion back, those directives
15 back from the Board, draft potential rules to
16 come back at the next meeting and let the
17 Board look at those draft rules to see if
18 that's what the Board meant. And we did a
19 similar thing last meeting and we actually
20 have a couple of draft rules today to talk
21 about with the Board at some point to see if
22 it's what the Board meant from the last
23 meeting. So, that's kind of how we see things
24 rolling forward. Hopefully, that will work.
25 And with that, I think we can just start in

1 on page -- what's marked as page 2 under
2 Section 333.011 in the definitions. There
3 were some comments that we may actually want
4 to define by rule some of the terms set out
5 in the definitions if the Board thinks that's
6 necessary. Under funeral merchandise, it
7 looks like there's -- it refers to other
8 personal property. That may be intended as a
9 catchall. If the Board wanted to give some
10 specifics by rule as to what some examples
11 might be of that, that's a possibility. Do
12 you just want to take comments from the Board
13 and then individually as we go?
14 CHAIRMAN: That will work.
15 MR. KRAUS: All right. Any thoughts
16 from the Board on that?
17 CHAIRMAN: Do you guys -- anybody have
18 a comment in that? Under that
19 personal-property comment?
20 MR. KRAUS: And I should say that as
21 we're going through these, that it's certainly
22 not required in any way that you promulgate
23 rules with regard to certain issues here with
24 the exception of where the statute explicitly
25 says "and the Board shall do this by rule."

1 Then, of course, you need to do a rule. But
2 this would be one of those where you could
3 decide to do a rule and be more explicit or
4 not and let the law stand for whatever it
5 means.
6 MS. DUNN: So, Martin, is your plan to
7 listen to any comments from the Board, then go
8 around the room and then vote?
9 CHAIRMAN: Do like -- yes.
10 MS. DUNN: Okay.
11 CHAIRMAN: Like we did last week. So,
12 if they have -- and I'll even start with that.
13 Why, in the law -- does anyone know -- why
14 did we have to define funeral merchandise
15 again, so to speak? What's different about
16 this definition of funeral merchandise than
17 what was actually already in the law; do we
18 know?
19 MS. DUNN: Well --
20 MR. McCULLOCH: This clarifies to do
21 with cemeteries, separate that out.
22 UNIDENTIFIED: Yeah.
23 CHAIRMAN: Is that why?
24 MR. McCULLOCH: Yeah.
25 MS. DUNN: Yes.

1 CHAIRMAN: Okay. Okay. Got the
2 answer. It was about to do with cemeteries,
3 so -- okay.
4 MR. KRAUS: And vaults versus caskets
5 versus where those lines are.
6 CHAIRMAN: Okay. I just wasn't
7 certain on that, so -- anyone on the outside
8 or Board that actually has some -- wants to
9 make a specific comment in regard to that
10 funeral merchandise section?
11 MS. DUNN: Don, did you have a comment?
12 MR. OTTO: No. I thought -- I'm
13 later. I'm too -- I'm further down.
14 MS. DUNN: Oh, okay. Okay.
15 MR. OTTO: I didn't realize how we
16 were doing this.
17 MS. DUNN: (Inaudible) -- that we
18 could write a rule to clarify that.
19 CHAIRMAN: Okay. Or do we need to?
20 MR. KRAUS: Yeah. And none of these
21 comments are intended to promote or recommend
22 that a rule should be done in any particular
23 way. It's just kind of brainstorming to say,
24 hey, this might be a place where you might
25 want a rule, but not intended to push the

1 Board in that direction.
2 MS. DUNN: And so, on my part in the
3 Board office and in Don's part at the
4 association office, a rule further clarifies
5 what the statute says so it's not left up to
6 someone's interpretation. So, rules help me
7 and the Board and the public to better
8 understand what the law says.
9 CHAIRMAN: Okay. Well, I'll go back
10 to myself with a question then. In specific
11 as to someone thought we might need to address
12 the personal-property issue, do we know why?
13 MR. KRAUS: I think because that's a
14 very generic term and could be very broad,
15 could be very narrow. From this industry,
16 what would you say would fall into that
17 category?
18 CHAIRMAN: Getting real specific here,
19 but anybody have a -- do you want comments
20 from everybody or is that just something you
21 guys would like to come back and --
22 MR. KRAUS: Well, I was just curious
23 because, you know, I could hear, you know, in
24 cases down the road, legal counsel making all
25 sorts of different arguments about what that

1 includes or doesn't include.
2 MS. DUNN: So, would it be a concern
3 -- well, Don has got a comment, but from my
4 standpoint and the Board's standpoint, would
5 there be any problem with a rule drafted and
6 brought back for your review?
7 CHAIRMAN: That would be my thought, I
8 suppose. Okay. Don, do you have comment?
9 MR. OTTO: Well, one concern that was
10 popped up -- this was prompted by the
11 cemeterians, but one thing that popped up as
12 it was talked about is, for example, clothes
13 of the deceased. Is that funeral merchandise
14 or not, you know?
15 CHAIRMAN: I suppose if you buy it out
16 of my closet, it is.
17 MR. OTTO: Yeah. You know, but if you
18 sell -- you know, then how does that affect in
19 preneed contracts, you know? So, I mean,
20 actually, I like regulation a lot because it
21 makes my life easier when people call me in,
22 but this might be one to let lie for a while
23 and see what happens -- if there's a problem
24 out there.
25 CHAIRMAN: Okay.

1 MR. OTTO: And just like I said, we --
2 nobody in this room, I don't think, really
3 generated this issue, anyway.
4 MR. KRAUS: Yeah. I think that's
5 right. And that's a good point in that the
6 rules that the Board comes up with through
7 this process are, of course, not the be-all,
8 end-all of all rules. I mean, you can be --
9 as different issues arise that aren't
10 identified earlier, you can look at
11 promulgating those at that time, so --
12 CHAIRMAN: Okay. To the Board, do you
13 want to do something with this? Do you want
14 legal to look at it, come back with some
15 possibilities or a thought, or move on?
16 MR. McCULLOCH: Move on.
17 CHAIRMAN: Move on. Okay.
18 MR. KRAUS: Let's see. Here, we have,
19 of course, a definition of person includes
20 corporation. There was a suggestion about,
21 you know, setting out explicitly in a rule
22 that a corporation has to be represented by an
23 attorney in like proceedings before the Board
24 and other such things. That is the law
25 already. I think the suggestion was made

1 because -- just so that it's explicit for
2 everyone to see that, hey, you know, if your
3 entity is actually a corporation, don't show
4 up as the owner and expect to be able to do
5 anything or say anything on behalf of the
6 corporation in -- at, say, a hearing before
7 the Board because you can't because that would
8 be -- you would be representing a legal
9 entity, that would be practicing law without a
10 license. You can't do that, you have to have
11 counsel there to represent the corporation.
12 As to whether that's necessary or not, I don't
13 know, but that was the comment.
14 CHAIRMAN: Comment?
15 MR. KRAUS: I think that may be
16 referenced in a couple of other places
17 throughout these sections, too.
18 MS. DUNN: I think it's important.
19 CHAIRMAN: So, the idea is just get
20 something in the wording so it's just already
21 acknowledged for people who realize it's there?
22 MR. KRAUS: Yeah.
23 CHAIRMAN: Okay. Board, address it?
24 MS. DUNN: It's already a law, so it's
25 just --

1 MR. REINHARD: Then no. No. It's
2 already a law.
3 MS. DUNN: No. I mean, we're just
4 confirming what -- so, is it okay?
5 MR. REINHARD: Move on. Yes.
6 MR. STALTER: Can I ask a question?
7 CHAIRMAN: Yeah.
8 MR. STALTER: Is that true of every
9 proceeding before the Board, if you have a
10 corporation, you have to be represented by an
11 attorney, or is it when it gets to an
12 administrative hearing, or what? In a way,
13 that gets counterproductive. You know, some
14 of these -- if it's a corporation and you want
15 to encourage them to come in and talk to the
16 Board if there's an issue, but if they've got
17 to bring an attorney, personally, I like the
18 part about the attorney, but I don't think
19 it's really what you want, though.
20 MR. KRAUS: I think it's certainly
21 true at hearings. You mean, just like
22 appearances before the Board?
23 MR. STALTER: Yeah. Just appearances.
24 Yeah.
25 MR. KRAUS: I mean, I think a person

1 -- and, say, an owner -- I think, could appear
2 before the Board -- and this is just my own
3 opinion -- could appear before the Board and
4 make representations as the owner of that
5 corporation. Now, are those the same as
6 representations of the corporation? I don't
7 think they are. In that setting, that may not
8 matter, but I think there is a difference.
9 MR. STALTER: I agree. I think part
10 of it is if you brought an entity in because,
11 you know, the Board got a complaint, if
12 there's something, you know, we may give you
13 an opportunity to talk about it, you know, you
14 will discourage them if I said bring your
15 attorney with you.
16 MR. McCULLOCH: Because in the past,
17 we could come by ourselves.
18 MR. KRAUS: Yeah. And I think then
19 that person would be appearing basically as a
20 witness who knows some facts about the
21 situation. And whether they are providing
22 representation on behalf of the corporation or
23 not doesn't really matter because they're
24 going to provide the same information either
25 way. But where it's a hearing, it does matter

1 because they're actually representing on
2 behalf of the corporation, and you have to be
3 because that's the party. So -- but that's a
4 good point. You could chill some effect where
5 people may take that as I can't show up
6 anytime for anything without my attorney,
7 which isn't really true.
8 CHAIRMAN: And I'll reiterate for the
9 court reporter. I realized when she moved the
10 microphone, that may fix it, but we really --
11 actually, we need you to stand up and just
12 come up to the corner of the table because
13 it's really important for the transcripts, and
14 identify yourself, please, so -- all right. I
15 heard move on, but we addressed some -- there
16 was, obviously, comments, so any other
17 comments?
18 MR. McCULLOCH: So, what else do you
19 put in here to clarify that? I mean --
20 MR. KRAUS: Well, you could do nothing
21 and let it stand as it is and the law is
22 already what it is. Or if you wanted to do
23 some kind of rule to try to explain that, then
24 you could. That would be going pretty deep.
25 That would be tough to set out in a rule in a

1 way that makes sense to anybody.
2 MR. McCULLOCH: I would think --
3 MR. KRAUS: But, you know, we can try
4 if you want us to.
5 CHAIRMAN: What's the downside of just
6 leaving it as the wording and going on?
7 MR. KRAUS: I don't know that there is
8 one myself. Other than, I suppose, there's
9 potential that someone may show up -- I had
10 this happen. This was at a hearing over at
11 the LIRC -- the Labor Industrial Relations
12 Commission. Someone showed up, they were a
13 sole proprietor, they were -- actually, they
14 were the owner of the corporation -- showed up
15 for a hearing thinking they could, you know,
16 represent themselves and found they couldn't,
17 and had a lot of trouble because of that.
18 The hearing was set, it didn't get continued,
19 and it was not a big deal. But, you know,
20 people are aware of their requirements and
21 aware of the law, and if they formed a
22 corporation, they, you know, had some
23 knowledge in that area, then there may not be
24 any impact at all.
25 MR. McCULLOCH: But if it comes to

1 that, Becky, would you be informing them as to
2 kind of how the procedure works?
3 MS. DUNN: Yes.
4 MR. McCULLOCH: So, you kind of
5 educate them anyway; right?
6 MS. DUNN: Yes.
7 MR. McCULLOCH: So, it might take care
8 of itself that way.
9 CHAIRMAN: Why don't we let this --
10 obviously, you guys decide, too, but why don't
11 we let Earl and Sharon, in their
12 get-togethers, look at what could be possible
13 with this. I think that -- and bring it back
14 to us, and then we can -- is that a good
15 thought?
16 MR. KRAUS: If you want to, that's
17 fine.
18 CHAIRMAN: Are you guys okay with
19 that? Do you want to do that?
20 MR. McCULLOCH: Yeah.
21 CHAIRMAN: Then we can decide if it
22 really is or isn't. All right.
23 MR. KRAUS: Okay. On down, they want
24 to define if the determining factor is not
25 whether they're receiving payment or not.

1 CHAIRMAN: Payment of what?
2 MR. KRAUS: That -- at all. That
3 someone can't say they're not practicing
4 funeral directing because they are -- well,
5 not -- just not charging that one customer
6 anything or something. That they're still in
7 the business even in that instance.
8 CHAIRMAN: Yes, Don.
9 MR. OTTO: Don Otto, Missouri Funeral
10 Directors and Embalmers Association. We
11 actually proposed a rule on this a year or so
12 ago that went nowhere fast because we had this
13 issue where we think "in the business of"
14 probably needs to be defined because we had,
15 for example, a minister who was arranging
16 funerals, but he didn't charge anything as
17 long as you made a $2,000 donation to his
18 church. Or the casket store that -- I'm not
19 in the business of doing funerals because I'm
20 not charging you anything for it, but if you
21 buy this casket from me, I'll help you out.
22 So, we proposed -- and I can try to
23 regurgitate it again if you can't find it in
24 the Board minutes, but a rule that's spelled
25 out that receiving any sort of compensation,

1 directly or indirectly, was "in the business
2 of." And the one thing it didn't -- and good
3 point. The one thing it didn't propose is,
4 like, what if you're usually in the business
5 of it, but you do this one for free, you
6 know? That shouldn't relieve you of the
7 obligations just because you did a free one
8 off for somebody on the side, either. So, we
9 supported that this be fleshed out for -- this
10 popped up when we had the issue of people
11 doing their own funerals, and we had to change
12 the regulation to make it clear people can do
13 their own funerals, which is fine if they're
14 not receiving compensation for it. But then
15 you get those situations where I'm not getting
16 paid for the funeral, but I'm only going to
17 help you if you make a donation to my church.
18 I think that's getting compensation and I
19 think you should be regulated if you're doing
20 that kind of thing.
21 CHAIRMAN: All makes sense.
22 MS. DUNN: If a rule defines that, it
23 could help us possibly better have a position
24 if the Federal Trade Commission challenges us.
25 Or since we are on probation for ten years.

1 CHAIRMAN: Okay. Comment from the
2 Board?
3 MR. McCULLOCH: I think that's a good
4 idea.
5 UNIDENTIFIED: Me, too.
6 MR. KRAUS: Don, would you still have
7 drafts of any of that that was proposed at
8 that time?
9 MR. OTTO: I'll have to dig, but I
10 will find it and I'll have it submitted by
11 Friday.
12 CHAIRMAN: Okay. So, obviously, you
13 guys need to work on that one. Okay. All
14 right.
15 MR. KRAUS: Okay. The last one on
16 page 2, preneed agents, clarify by rule of
17 preneed agent/seller must also be licensed in
18 Missouri. Any thoughts on that?
19 CHAIRMAN: To be a preneed agent in
20 Missouri, you have to be a preneed seller in
21 Missouri.
22 MR. KRAUS: That the agent, of course,
23 would be registered in Missouri, and the
24 seller for which they are an agent would need
25 to licensed in Missouri.

1 MR. McCULLOCH: And that's what the
2 new law says; right?
3 MR. KRAUS: I think it does. I think
4 that's kind of a clarification just of setting
5 it out there for everybody. Whether that's
6 also needed in rule or is more of a
7 clarification setting out explicitly for
8 people to look at, that may be just what it
9 is. So, it may be duplicating to some extent.
10 MR. McCULLOCH: It sort of seems like
11 it is because it's just right there. It's
12 very clear now that you have to have a license.
13 CHAIRMAN: So, from a legal point of
14 view -- or do you need to look?
15 MR. KRAUS: As I recall, this was a
16 comment as, you know, this may be worth
17 stating again in rule kind of a thing. But
18 I'm -- is it something that I'd say you
19 really, really have to do? No, I don't think
20 so.
21 MR. McCULLOCH: So, do you think
22 people go to the definitions first to get a
23 quick overview and they would think, oh, I
24 don't have to have a license and then just go
25 on; do you think that's the problem?

1 MR. KRAUS: Or I suppose that someone
2 could think, well, I'm a seller, but I'm not
3 in Missouri, and I'm just going to have a
4 bunch of agents that are registered in
5 Missouri and I'll be okay. Well, no, because
6 the agents --
7 MR. McCULLOCH: Right.
8 MR. KRAUS: -- need to be agents of a
9 seller that is licensed in Missouri.
10 MS. DUNN: What we have throughout is
11 we have Missouri emphasized throughout our
12 rules, so it would probably help someone that
13 read this. And we've gotten lots of agent
14 calls already, so it just helps remember that
15 --
16 MR. McCULLOCH: So, what happens is the
17 definition doesn't change, or do you add it
18 there, or do you put it back in the back like
19 a -- (inaudible.)
20 MR. KRAUS: Everything that we're
21 talking about today would be putting something
22 into a separate rule that would supplement the
23 statute.
24 MR. McCULLOCH: But is it like this
25 when you have -- the rules are in the back?

1 MR. KRAUS: Yeah.
2 MR. McCULLOCH: You have to be like
3 this, so it's really not going to be under
4 definition anyway?
5 MR. KRAUS: Except to the extent there
6 could be a definition section in the rules.
7 But you're right; if you go to the statute and
8 look at the definitions in the statute, it's
9 not going to have anything right there.
10 MR. McCULLOCH: Yeah.
11 MR. KRAUS: No, it's not.
12 MR. McCULLOCH: So, it's not going to
13 help that anyway.
14 MR. KRAUS: To that extent, no.
15 MS. DUNN: Typically what -- if
16 someone has a phone call or phones in an
17 inquiry about the statute, we do reference the
18 rules for additional clarification. So, if
19 they have -- if the statute hasn't included,
20 let's say, Missouri, then the time to put that
21 in would be by rule making.
22 MR. McCULLOCH: I got you. Okay. So,
23 that helps you then, for sure?
24 MS. DUNN: Well, it helps individuals
25 understand exactly -- "Oh, I see. I have to

1 work for a Missouri seller."
2 MR. McCULLOCH: I got you.
3 (Inaudible.)
4 MS. CLARKSTON: But is that something
5 that can be included in the agent rule versus
6 the definition rule to keep it all together to
7 address your issue, that somebody would know
8 exactly where to go? Isn't that something
9 that could be said under the agent rule, as
10 well?
11 MR. KRAUS: Sure. Yeah.
12 MR. CLARKSTON: Okay.
13 CHAIRMAN: Bill?
14 MR. STALTER: Bill Stalter, Stalter
15 Legal. The issue I saw here with it, I mean,
16 we know what a seller is, that's defined, and
17 the agent has to be authorized by the seller,
18 and we know that the seller has to be licensed
19 in Missouri. I saw the issue more as how is
20 the agent authorized by the seller, and that
21 would be a regulation issue as opposed to
22 having to redefine or add clarity to the
23 existing definition. Does that make sense?
24 MR. KRAUS: You mean, so that you
25 don't have someone who registers as an agent

1 for a seller and the seller doesn't want them
2 to be?
3 MR. STALTER: No. We're talking about
4 -- we already have -- we know what a seller
5 is. He's defined. He has to be licensed by
6 the Board. He has to be in Missouri. But
7 now we say how is this agent authorized by a
8 defined seller? You know, that was really
9 kind of the issue we argued with last year in
10 terms of, you know, the relationship between
11 an agent and the seller.
12 MR. KRAUS: And you would be going
13 towards prohibiting or preventing someone
14 asserting they're an agent in an unauthorized
15 manner?
16 MR. STALTER: No. I guess, I'm not --
17 I'm struggling with what it is that you're
18 trying to address where you see the need for
19 the regulation, you know, in defining, you
20 know, the -- what that agent's authority under
21 that rule, who gave him the authority. I
22 think we know who gave him the authority.
23 It's a Missouri licensed seller.
24 MR. KRAUS: Does the statute actually
25 say Missouri licensed or does it just say

1 licensed?
2 MS. DUNN: Senate Bill 1?
3 MR. KRAUS: Yeah. The agent -- here
4 we go. Well, it does say "who are licensed
5 as" -- let's see.
6
7 MS. DUNN: What page are you looking
8 at?
9 MR. KRAUS: Fourteen. No person shall
10 sell, negotiate, or solicit the sale preneed
11 contracts for or on behalf of the seller
12 unless registered with the Board as a preneed
13 agent.
14 MR. McCULLOCH: Where did you all find
15 that?
16 MR. KRAUS: On page 14 --
17 MS. DUNN: Of Senate Bill 1.
18 MR. KRAUS: Well, 14 of your handout.
19 MS. DUNN: Oh, okay. Okay. I thought
20 you were looking in the senate bill.
21 MR. KRAUS: Under agent registration of
22 Section 333.325, it has, "No person shall sell,
23 negotiate, solicit the sale of preneed
24 contracts for or on behalf of a seller unless
25 registered with the Board as a preneed agent

1 except for" -- dah, dah, dah, dah, dah. "The
2 Board shall maintain a registry." And then
3 down at the bottom, it has that they'll
4 provide the name and address of each seller
5 for whom the agent is authorized to sell. And
6 you look at the definition of preneed agent,
7 it says "The person authorized to sell a
8 preneed contract on behalf of the seller."
9 So, I think the thought from that comment was
10 to explicitly say a seller licensed in
11 Missouri.
12 CHAIRMAN: It may be redundant, it may
13 not be.
14 MR. STALTER: I think, you know,
15 sometimes -- my complaint is about SB 1. You
16 know, sometimes we said things twice, you
17 know, just to be -- you know, we really mean
18 it this time, but sometimes we didn't say it
19 the same way each time. And so, you know, if
20 it would keep -- if we're going to repeat it
21 because we really mean it this time -- you
22 know, if we state it differently each time,
23 then it creates ambiguity and then somebody
24 else would come in and read it differently.
25 So --

1 MR. KRAUS: What language will you
2 point to there to say that it is a Missouri
3 seller?
4 MR. STALTER: Oh, I think that, you
5 know, he has to register. One thing, he's
6 going to register with the Board, but who is
7 your seller?
8 MR. KRAUS: Right.
9 MR. STALTER: You know, have we got --
10 you know, we have licensed sellers.
11 MR. KRAUS: Well, what if they say my
12 seller is this seller who is registered in
13 Maryland under Maryland law?
14 MR. STALTER: Well, you know, we
15 define seller under SB 1.
16 MR. KRAUS: And they're my seller.
17 Yeah. "As a person who executes a preneed
18 contract with the purchaser and is obligated
19 under such preneed contract to remit payment
20 to the provider."
21 MR. STALTER: Who is licensed with the
22 State Board, so say that. You know, then
23 within our definition of sellers.
24 MR. KRAUS: I mean, that's the -- I'm
25 just saying that's where the comment came

1 from, so --
2 MR. STALTER: Okay.
3 CHAIRMAN: Okay, Board. We've heard
4 some discussion in that thought. What do you
5 want to do?
6 MR. McCULLOCH: Well, it won't hurt
7 anything to put -- (inaudible.)
8 CHAIRMAN: Okay. Any other comment or
9 just add it on?
10 MS. DUNN: Can we discuss how we're
11 doing this process that we're voting and
12 amending unless there is opposition?
13 CHAIRMAN: Becky is reminding me that
14 the way that this is going to work is instead
15 of voting on every little single one of these
16 as we go to the end, we'll say, "And we're
17 going to do all of these. All in favor?"
18 MS. DUNN: Unless there is strong
19 opposition, and then we'll deal with it per
20 comment.
21 MR. KRAUS: And, of course, that's --
22 I'm assuming that any of these directives will
23 be to merely to the point of staff drafting
24 something and bringing it back to the next
25 Board meeting, not any actual decision.

1 MS. DUNN: Correct
2 CHAIRMAN: Correct. Okay. So, John?
3 John says go for it. Everybody else in the
4 mode to go for it? Go for it.
5 MR. KRAUS: And, Bill, if you have any
6 additional comments as to the authorization
7 part of it that you want us to try to include
8 --
9 MR. STALTER: Yeah. I know the --
10 yeah.
11 MR. KRAUS: -- we could try to address
12 that. All right. Flying right along, page 3
13 of the handout, whether it's set out whether
14 every licensed funeral director is a provider
15 and must pay the fee.
16 MR. McCULLOCH: The provider has to
17 pay a fee now annually; right?
18 MS. DUNN: They pay an annual report.
19 That's correct. Currently.
20 MR. McCULLOCH: So, you're asking that
21 every licensed funeral director is a provider
22 and must pay the fee? That's paid by the
23 funeral home, isn't it, not every individual
24 funeral director; correct?
25 UNIDENTIFIED: Correct.

1 CHAIRMAN: I don't see how every
2 funeral director could be a provider, but I
3 guess I can understand where somebody might
4 kind of think that, but --
5 MR. McCULLOCH: The funeral home is the
6 provider, not the individual funeral director.
7 MR. KRAUS: I don't think the comment
8 went toward clarifying that one way or the
9 other.
10 CHAIRMAN: Yes, Don?
11 MR. OTTO: Don Otto again. Yeah. I
12 think you're right. It's not fatal for the
13 statute because persons defined is including
14 corporations and all that stuff. But a
15 regulation that say under the provider means
16 funeral establishment under here --
17 MR. McCULLOCH: That needs to be
18 clarified?
19 MR. OTTO: Yeah. To clarify the
20 provider in this section means funeral
21 establishment that has, under Chapter 436,
22 consented to -- they're -- done whatever it is
23 you have to do under 436 to be a provider
24 because what you don't want to have somebody
25 do a preneed contract, stick a funeral home on

1 it without the funeral home's knowledge, and
2 then the funeral home get in trouble because
3 they didn't file an annual fee when they
4 didn't even know they were on the contract.
5 So, it might be the regulation would say, you
6 know, provider under this means a funeral
7 establishment that has agreed to undertake the
8 obligations of a provider under Chapter 436,
9 something like that.
10 CHAIRMAN: Okay. Just for my own
11 personal thought, I don't understand how any
12 funeral establishment thinks they are not a
13 funeral provider or a preneed provider.
14 MS. DUNN: I guess, unless they do all
15 at-need.
16 MR. MAHN: We talked about that,
17 combining those two. I think it makes --
18 don't make a lot of sense. They mean two
19 separate things. I mean --
20 MR. McCULLOCH: The provider/seller,
21 you mean?
22 MR. MAHN: Yeah. Well, the provider
23 establishment. Provider establishment. I
24 mean, isn't every --
25 MR. McCULLOCH: Combine it, you mean?

1 MR. MAHN: Well, we talked about one
2 of those circle --
3 CHAIRMAN: Is that feasible? Is that
4 feasible that the establishment license could
5 be establishment/provider in one license?
6 Didn't mean to put you on the spot, but --
7 MR. KRAUS: No. I mean, I would
8 imagine that it is. I would expect there's a
9 number of details we would need to work out.
10 MR. MAHN: It's too late. We're
11 separating two things that are one common
12 thing, anyway. It doesn't make a lot of sense.
13 CHAIRMAN: Brad Speaks?
14 MR. SPEAKS: Brad Speaks. It could be
15 possible, while unlikely, that a funeral
16 establishment would not be a provider of
17 preneed contracts. They didn't sell them,
18 they don't provide them, and it would be
19 counterproductive, I think, to include -- I
20 mean, your suggestions is sensible except that
21 some funeral homes could say, no, we don't
22 want anything to do with preneed, and, yet,
23 the regulation that you're talking about could
24 force them to become providers when, in fact,
25 they did not want to be.

1 MR. KRAUS: And then they would have
2 to meet all the --
3 MR. SPEAKS: They've got no preneed
4 contracts, they never sold for whatever
5 reason, and just don't want anything to do
6 with it, so I would hate to, I guess, force
7 them into that bucket when they didn't want to
8 be.
9 MR. KRAUS: And then they would have
10 to meet all the requirements for that and pay
11 the fees for that.
12 MR. SPEAKS: Right. Pay the fees, and
13 they don't do it, so that would be restrictive.
14 MR. MAHN: Do you have an example of
15 someone that don't do it?
16 MR. SPEAKS: No.
17 MR. MAHN: I never heard of it.
18 MR. SPEAKS: But it could be -- you
19 know, it could happen.
20 MS. DUNN: There is one.
21 MR. MAHN: I actually think it would
22 save them money, you know, combining two
23 licenses -- it would combine the two. It
24 would be a lesser --
25 MR. McCULLOCH: If you just said that,

1 if you combine them, how do you think --
2 because I think you're right. I think there
3 could be someone out there who says, hey,
4 given the --
5 MR. SPEAKS: Right. And if we move
6 forward, we may see more of that.
7 MR. McCULLOCH: Yeah. We're not
8 messing with this at all. But what else do
9 they have to do if they aren't really selling
10 anything, even though it says establishment
11 and provider --
12 MR. MAHN: Oh. If they don't want to
13 be a preneed, they don't have to. It just --
14 they just have -- hold the license.
15 MR. McCULLOCH: Would it hurt them in
16 any way, though? The fee is going to be the
17 same, I guess.
18 MR. SPEAKS: Yeah. I guess not.
19 MR. McCULLOCH: Just a thought. I'm
20 just talking out loud.
21 CHAIRMAN: Yes, Bill?
22 MR. STALTER: The way I was looking at
23 it is differently than -- the provider, you
24 want a broader definition because you're
25 thinking of, like, a casket store. In other

1 words, they're not funeral establishments, but
2 they can sell their caskets preneed. And as
3 long as they comply with 436, they're not
4 going to have an establishment license.
5 CHAIRMAN: Okay.
6 MS. DUNN: That's true.
7 CHAIRMAN: Don Otto?
8 MR. OTTO: Well, that's what I was
9 going to say.
10 CHAIRMAN: Okay. Well, I was even
11 thinking, you've got a guy that says I'm not
12 going to provide any preneed. Somebody walks
13 in the door and says I have a preneed at XYZ
14 Funeral Home and I want you to service this
15 thing. He's got to say no.
16 MR. MAHN: Yeah. Doubtfully, they'll
17 say no.
18 CHAIRMAN: Doubtfully, he's going to
19 say no.
20 MR. MAHN: He'll service the contract,
21 break the law.
22 CHAIRMAN: So, then the inspectors,
23 through a random inspection, just when they're
24 there doing their regular inspections --
25 (inaudible) -- he serviced a preneed from XYZ

1 Funeral Home and he's not a provider, so now
2 he's noncompliant. Don?
3 MR. OTTO: I would say, though,
4 somebody that accepts a preneed after the time
5 of the beneficiary's death is not a provider
6 because it's no longer preneed. So, you know,
7 if you say I've got this contract that I
8 originally signed with a guy down the street,
9 my dad died, I'd rather have you do it, that
10 doesn't trigger 436 for funeral home #2
11 because they are not the preneed provider,
12 they're just now -- they're, perhaps, the
13 transferee of funds at need.
14 CHAIRMAN: I understand what you said,
15 but it's still a preneed.
16 MR. McCULLOCH: Yeah. But they're not
17 a provider in the sense, I think he's saying,
18 that you have to be signed up with the State
19 Board and you've got to have paid a fee and
20 all that. You're just going to service this
21 contract. Is that what you're getting at?
22 MR. OTTO: Yeah.
23 MR. McCULLOCH: Yeah.
24 CHAIRMAN: And what if something goes
25 wrong in it somewhere?

1 MR. McCULLOCH: I don't see where that
2 -- I mean, I don't think anything changes. I
3 mean, there may be complaints and lawsuits and
4 things like that.
5 CHAIRMAN: Right. Okay.
6 MR. McCULLOCH: But I don't think that
7 it'll matter whether he's preneed or not, you
8 know. You're just saying maybe they didn't
9 fulfil the contract role -- first off, they're
10 not obligated to; you know what I mean?
11 CHAIRMAN: But what if they agreed to?
12 MR. McCULLOCH: So, it's really
13 negotiation.
14 CHAIRMAN: I know we're totally
15 what-iffing.
16 MR. McCULLOCH: If they agreed to it
17 and then they don't, well, that -- I'm sure
18 there's --
19 MR. KRAUS: If they obligate
20 themselves -- I mean, he comes in and says I
21 want -- I've got this other provider
22 designated, but it's at need now. I'm mad at
23 them. I don't want them to do it anymore, I
24 want you to do it, and you obligate yourself
25 to do it, then have you become the obligated

1 provider under that contract and, therefore,
2 fall into 436?
3 MR. McCULLOCH: I think so.
4 MR. KRAUS: Maybe.
5 MR. McCULLOCH: I mean, I think just
6 from a contractual standpoint, they're
7 obligated to fulfill the contract, you know,
8 what they agreed to do.
9 MR. KRAUS: Right.
10 MR. McCULLOCH: Because they may say,
11 well, look, you know, we'll take care of this,
12 but it's going to -- we know -- maybe they
13 know and they check it out and say, well, this
14 thing is going to fall short, so you're going
15 to have to pay us the additional funds. And
16 if they both agree to that, then no harm there.
17 CHAIRMAN: Have you got a question,
18 Don?
19 MR. OTTO: I'll just say a preneed
20 contract -- I don't know if we -- (inaudible)
21 -- defined as a contract for a funeral, goods
22 or services were such -- goods or services are
23 not presently required. So, if the
24 beneficiary has died, it's no longer a preneed
25 contract, it's now -- (inaudible.)

1 (Several people talking simultaneously.)
2 MR. OTTO: It's now an at-need
3 situation for which they're, theoretically,
4 the money is sitting out there. So, like I
5 said, I don't mean -- I could definitely see,
6 going forward, that there will be funeral
7 homes that at least want to take the position
8 I don't do preneed. Now, if you -- if the
9 beneficiary has died and you come to me with
10 somebody else's preneed contract, I'm going to
11 treat this like an insurance policy, and this
12 is now an at-need situation as far as I'm
13 concerned and this just is how you're trying
14 to fund it. So, I mean, I could --
15 MR. KRAUS: So, you're saying you're
16 not agreeing to be obligated under a preneed
17 contract, you're agreeing to be obligated
18 under an at-need contract.
19 MR. OTTO: You're agreeing to be
20 obligated under an at-need contract.
21 CHAIRMAN: Questions, Board?
22 MR. McCULLOCH: So, we're back to the
23 real question is, do you want to combine them
24 or keep them separate? I forgot what we --
25 MR. KRAUS: Well, that's kind of my

1 question that grew out of this. The initial
2 one was whether we want to do further
3 explanation of the definition of provider by
4 rule.
5 CHAIRMAN: Do you see that we need
6 that, personally? Do you?
7 MR. KRAUS: I think given the amount of
8 discussion that there's been on that point,
9 that might be worthwhile.
10 CHAIRMAN: Okay.
11 MR. KRAUS: We could at least draft
12 something, and if everyone dislikes it, then
13 toss it aside.
14 CHAIRMAN: Okay. We'll look at the
15 thought of that. Anybody with input, you know
16 the drill on the e-mail by Friday. That
17 answers that, doesn't it?
18 MR. KRAUS: It does. I mean, there
19 was the other question that Todd brought up
20 about combining the two, which is kind of
21 another question. I don't know if you want to
22 address that now or address that at another
23 time.
24 CHAIRMAN: Any question into the
25 thought of that -- combining them?

1 MS. DUNN: I think Brad and Don
2 brought up some points that might prevent the
3 consideration of not doing that; right?
4 CHAIRMAN: Uh-huh.
5 MS. DUNN: Yeah.
6 CHAIRMAN: I'd say no at the point.
7 Let's just leave it that way unless -- because
8 nobody seems to think so, so --
9 MR. KRAUS: All right. No strong
10 feelings on that. All right. I guess we
11 also had in there in provider, defining any or
12 all of the terms there, if you think that's
13 needed or not. Final disposition, funeral
14 burial services or facilities, funeral
15 merchandise.
16 CHAIRMAN: So, that would, basically,
17 just be more definitions.
18 MR. KRAUS: Funeral merchandise is
19 already defined.
20 CHAIRMAN: Okay.
21 MR. KRAUS: Everyone seems to know
22 what final disposition means, although I don't
23 know that that's defined.
24 CHAIRMAN: Yeah. Do you think we need
25 to define those?

1 MR. KRAUS: I don't now.
2 CHAIRMAN: Yes, sir.
3 MR. OTTO: Final disposition is
4 defined under Chapter 193 under the Health
5 Department regulations, if you want to make a
6 reference to it.
7 MR. KRAUS: To the extent -- yeah.
8 And the rule could simply say that final
9 disposition means as defined in section
10 so-and-so.
11 MR. OTTO: And there's also
12 regulations under that that expanded it to,
13 for example, to include the delivery of the
14 body to an educational institution that the
15 Health Department added.
16 CHAIRMAN: Comment, Board? Good
17 enough as it is or work on a definition?
18 MS. DUNN: What about consideration of
19 referencing to the Department of Health
20 definition; is that okay?
21 CHAIRMAN: I suppose.
22 MS. DUNN: We'll just give those --
23 (inaudible.)
24 CHAIRMAN: (Inaudible.)
25 MS. DUNN: I think it's a clarity

1 issue. (Inaudible.)
2 MR. KRAUS: We could easily draft that
3 and bring it back.
4 MS. DUNN: Okay.
5 CHAIRMAN: All right. Guys, we need
6 yeas and nays here.
7 MR. KRAUS: And if there's a number of
8 them where there's no strong feelings about
9 doing something, then we can just go -- we can
10 just move right on. Because we really did
11 include a lot of comments, and many of them
12 were just for brainstorming purposes, really.
13 MR. McCULLOCH: Will a lot of the
14 current rules just be -- (inaudible) -- or
15 we've got to do that individually?
16 CHAIRMAN: Say that again.
17 MR. McCULLOCH: Well, you know, like,
18 in the current law, you've got all these rules
19 which obviously there's been a lot of thought
20 put into this through that time. Does a lot
21 of that kind of move over, or can we look at
22 this?
23 MR. KRAUS: Well, we're currently going
24 through the old rules and seeing --
25 MR. McCULLOCH: If they match up?

1 MR. KRAUS: -- what we're going to
2 want to do -- what we would suggest doing with
3 those.
4 MR. McCULLOCH: Okay.
5 MR. KRAUS: And whether they apply at
6 all anymore or not.
7 MR. McCULLOCH: Okay.
8 MR. KRAUS: So, again, that's a good
9 question.
10 CHAIRMAN: Mark, you had a question?
11 MR. WARREN: Yeah. On the very back
12 of this handout, there -- this is Mark Warren
13 with Preneed Coalition. There was a comment
14 -- (inaudible.) I'm not aware of any of my
15 clients, anyway, who are actually self
16 preneed. I think there may have been a
17 misunderstanding that some forms that are
18 provided as a courtesy by the preneed
19 insurance companies -- or not preneed
20 insurance, but the insurance companies that
21 fund preneed may have been mistaken as preneed
22 contracts or offers to sell preneed contracts.
23 I'm going to get copies of those
24 documentations to provide to you all to show
25 that that's what it is. But we would oppose

1 any effort to make us get, you know, a
2 seller's license if, in fact, we don't sell
3 preneed, we simply provide the funding
4 mechanism for it, so --
5 CHAIRMAN: Okay.
6 MR. STALTER: I'd like to step in,
7 because with the banks, we have the same
8 issue. If you're going to make the insurance
9 companies a seller, the banks -- the trustees
10 will have the same issue. They just said
11 we're there -- we'll facilitate and help with
12 compliance, but we're not the sellers.
13 MR. WARREN: We're not in that
14 business.
15 CHAIRMAN: Okay.
16 MR. STALTER: Can I interject
17 something at this point? I think we're going
18 to lose Representative Meadows here in about
19 ten minutes. Are there any issues with
20 something, or are there sections that you're
21 asking for some -- looking for any insight or
22 anything?
23 CHAIRMAN: Do we have anything
24 specific that we were --
25 MR. KRAUS: Not anything specific, I

1 don't think.
2 CHAIRMAN: Okay. Actually, we might
3 next week. I would reiterate: We knew this
4 was going to be grueling guys, line by line,
5 comment by comment. Do we want to address it,
6 do we not want to address it, is it fine just
7 as it is? So, we're here.
8 MR. KRAUS: If you wanted to, I mean,
9 before Representative Meadows leaves, we could
10 go ahead and look at the draft rules that we
11 came up with from last week, but that's a big
12 change in gears; if you wanted to, we could.
13 CHAIRMAN: Would you like for us to do
14 that just for your benefit or look at that?
15 We can do that. All right.
16 UNIDENTIFIED: (Inaudible.)
17 CHAIRMAN: So -- do what?
18 UNIDENTIFIED: (Inaudible.)
19 CHAIRMAN: I guess, if he wants to
20 give a public definition of what he thought.
21 MR. McCULLOCH: Well, the law is the
22 law.
23 CHAIRMAN: The law is the law.
24 MR. McCULLOCH: Just like you're trying
25 to change the one that you made before. I

1 don't think we can sit up here and say, well,
2 I think that this is what this means. I
3 mean, you want it to be that everybody gets
4 audited?
5 REPRESENTATIVE MEADOWS: I do.
6 MR. McCULLOCH: Yeah.
7 REPRESENTATIVE MEADOWS: Absolutely, I
8 do.
9 MR. McCULLOCH: So, you can't go
10 changing it now.
11 REPRESENTATIVE MEADOWS: I didn't
12 change it.
13 MR. McCULLOCH: You might change it
14 that it's legislation.
15 REPRESENTATIVE MEADOWS: I'm not
16 changing it, John.
17 MR. McCULLOCH: It sounds like you were
18 changing the definition of it.
19 REPRESENTATIVE MEADOWS: I think what
20 it is, there is some issue, since you brought
21 that up now -- this is Representative Meadows
22 in response to your comment. I think that
23 there was a lot of people here. This Board
24 has rule-making authority, does it not? Yes,
25 it does. So, therefore, there was some issue

1 because some people were not left out or
2 defined in here as funeral directors are. If
3 I'm a funeral director, that I'm left out of
4 that. What I'm saying is if I'm an employee
5 of a funeral home and I wish to be on the
6 State Board, then I wholeheartedly believe
7 that that funeral home should be inspected or
8 should have had their books audited. It's the
9 same difference. That's my interpretation.
10 Again, like you and like everybody in this
11 room has their own interpretation as to how
12 the law is. Are we not sitting here doing
13 that? That's what we are doing right here
14 this morning and that's what you did last
15 week. That's my interpretation. Being as how
16 it's not actually defined, it is what it is.
17 That's just my position on that, and that's
18 always been my position, and I feel that you
19 or whoever sits on this board should be held
20 to a higher standard in the industry. I feel
21 that that person needs to be looked at and
22 that he needs to have passed that type of
23 regulation. I don't think I'm asking for
24 anything other than that. So, if you --
25 MR. McCULLOCH: I wasn't disputing

1 that. That's what it said.
2 REPRESENTATIVE MEADOWS: Well, exactly.
3 MR. McCULLOCH: But you can't go
4 changing it now.
5 REPRESENTATIVE MEADOWS: I did not
6 change that.
7 MR. McCULLOCH: Well, it sounded like
8 that's what you were wanting to do.
9 REPRESENTATIVE MEADOWS: No. Heavens
10 no. Not in the very least.
11 MR. McCULLOCH: Because you're saying,
12 well, it really didn't mean just owners,
13 you're trying to broaden that. It says it has
14 to be owners.
15 REPRESENTATIVE MEADOWS: I feel that
16 this Board -- the reason why I made that
17 comment this morning, because I feel this
18 Board has the right, under their rule-making
19 authority, to clean that up. And if not, we
20 can gladly go back and clean it up in
21 legislation next year. I don't have a problem
22 with that. But the bottom line is to throw
23 the whole thing out and say it's
24 unconstitutional, as I have heard other people
25 speak around the state --

1 MR. McCULLOCH: I haven't heard that
2 at all until you mentioned it today.
3 REPRESENTATIVE MEADOWS: Well, I heard
4 that coming back from a lot of people. So,
5 whether it was said here, I know it's being
6 said elsewhere, so --
7 MR. McCULLOCH: I think you may have
8 to clean it up to get anybody on the Board.
9 REPRESENTATIVE MEADOWS: Absolutely.
10 MR. McCULLOCH: Okay.
11 REPRESENTATIVE MEADOWS: And I'm
12 willing to do that.
13 MR. McCULLOCH: But when your goal was
14 originally to keep people from getting on the
15 Board, then that's --
16 REPRESENTATIVE MEADOWS: That's not my
17 goal, no. I'm -- my goal here is, is that
18 everybody that's a funeral director or works
19 for a funeral home, in a funeral establishment
20 licensed to do business in the State of
21 Missouri, is held to the highest standard and
22 the highest regard and they should also have
23 their financial house in order to serve on
24 this Board. And I think anybody that's on
25 this Board would agree with me, and I think

1 everyone sitting in this room would agree with
2 me. That's just my personal opinion, but
3 maybe there are some that don't agree with me.
4 MR. McCULLOCH: No, I don't think
5 anybody disagrees with that.
6 REPRESENTATIVE MEADOWS: No. And that
7 was the whole intent and purpose, when I sat
8 with Representative Dixon and we talked about
9 his amendment as opposed to my amendment, he
10 said absolutely.
11 MR. McCULLOCH: But what you don't
12 understand is no one is going to do it because
13 they cannot afford it. They're not going to
14 want to afford it. They're not going to want
15 to afford that because you know what goes into
16 getting a full-blown audit of your personal,
17 at-need, and preneed?
18 REPRESENTATIVE MEADOWS: I'm certain
19 it --
20 MR. McCULLOCH: It's hundreds of
21 thousands of dollars if you can get someone to
22 do it.
23 REPRESENTATIVE MEADOWS: Well, and
24 again, I feel that the Board -- this Board has
25 the right under your -- under this rule-making

1 authority to decide on what that is. I'm just
2 saying that they need to have passed through
3 some type of -- have their books looked at.
4 I wasn't talking, per se, bam, like you have
5 got to have all this. I feel as this process
6 goes, and as a person --
7 MR. McCULLOCH: But that's what the
8 law says.
9 REPRESENTATIVE MEADOWS: I understand
10 that. And what did I say --
11 MR. McCULLOCH: Okay. But I don't
12 think this Board, if I understand right, can
13 change or make a rule that changes the law.
14 REPRESENTATIVE MEADOWS: I'm not
15 saying that, but maybe you can clarify where
16 you're going, John. I think that's what we're
17 sitting here today is clarifying each and
18 every word and each and every phrase as we
19 move forward through this process. That's why
20 I'm here today is to try to help.
21 MR. McCULLOCH: And I think there's a
22 definition of audit. That's what I'm getting
23 at. I think there's a definition out there of
24 audit, and I don't think you can change that.
25 REPRESENTATIVE MEADOWS: Well, from

1 what I was given for my definition of audit --
2 and, again, I'm sitting between two attorneys
3 here and there's an attorney at the end of
4 that table there. Everybody has their own
5 interpretation as to what is what and what is
6 this and what is that and what is this. By
7 the way you look at something and by the way
8 I look at something, it could be two different
9 things. Now, when I was given a sheet by --
10 when it was defined audit, and I don't have
11 that paper -- that sheet with me, but it was
12 defined as an audit that depends upon as you
13 look at it. The description that I was given
14 that day by the gentleman that was working
15 with me in legislative research did not define
16 it as you would define it. So --
17 MS. DUNN: If I may interrupt, the --
18 Sharon Euler suggested there might be a
19 definition of audited financial statement
20 somewhere.
21 REPRESENTATIVE MEADOWS: Yes. That's
22 what I have.
23 MS. DUNN: And so, we could certainly
24 look into that and bring that back to the
25 Board.

1 REPRESENTATIVE MEADOWS: Yes.
2 MR. STALTER: But before we break up,
3 if I can, I've had this situation, and I have
4 to agree with John. I have an archdiocese
5 that we got into the situation where we're
6 trying to show compliances of the state,
7 compliance with the state law -- I don't
8 remember if it was a bank or the archdiocese
9 asked that question, "Can we rely upon the
10 audited financial statement," because they get
11 one done every year. And so, we brought in
12 the audit firm and here's our issue. All we
13 were looking for is compliance with the
14 delivery of vaults. And I'll tell you, I
15 could -- and after two hours, what we got,
16 that auditor said there is no way I'll do
17 that. All I do is I go look at their
18 financial statement and look to see whether it
19 accurately reports their income, revenues, and
20 expenses. I don't want to go any further than
21 that. And so, I know what the intent was,
22 you know, the intent, but it doesn't -- you
23 know, audited financial doesn't show any of
24 you whether you comply with 436. And so, in
25 a sense, we've got to work through this, find

1 some way -- I know what you're trying to get
2 to, but this doesn't do it. And, you know --
3 and it does; those audits cost a lot of money
4 and it -- you know. And the issue is here is
5 we want to make sure whoever is on the Board
6 understands and complies with the statute, and
7 how do we do that? I'm not sure, you know.
8 CHAIRMAN: Don Otto?
9 MR. OTTO: I don't think there's
10 anything wrong, and somebody correct me if I'm
11 wrong, if it's possible, since audited
12 financial statement is not defined anywhere in
13 the statute, for the regulation to say for
14 purposes of 333.151, audited financial
15 statement shall mean blank. I'm just thinking
16 off the top of my head. We need to get an
17 accountant or somebody in here to use the
18 right words. But a balance sheet provided by
19 the funeral establishment that has been
20 reviewed by an independent certified public
21 accountant or something like that, and just
22 say when it says audited financial statement
23 in this sentence, this is what we mean. A --
24 and, again, I'm just making stuff off the top
25 of my head here. A balance sheet of the

1 funeral establishment that shows its at-need
2 and preneed business that has been reviewed by
3 an independent accountant and signed off on.
4 You know, we do -- I mean, I know we have an
5 annual statement every year that is reviewed
6 by an accountant and signed off, and they've
7 got that page at the front that, you know,
8 disclaims anything from the accountant saying,
9 you know, I disclaim anything in here, but I'm
10 signing it anyway. But I think that's within
11 the Board's power to say this is what we mean
12 by audited financial statement since it's not
13 defined anywhere else. And just spell out
14 what it is the Board physically wants. Or it
15 could be a financial -- you know, an audited
16 financial statement means a financial
17 statement form that will be created by the
18 Board that the proposed person is going to
19 have to fill out and have reviewed by -- you
20 know, signed off on by an accountant. But I
21 don't think we are locked in to some
22 accountant textbook definition of what audited
23 financial statement is here, and I think if
24 somebody that understood accounting better
25 could come up with some language where it

1 would not be -- you're right. A full-blown
2 audit, people aren't going -- it's not going
3 to happen. But it doesn't say a full-blown
4 audit, it says an audit of financial
5 statements, which isn't defined. So, if you
6 guys come up with what you think is
7 appropriate and not onerous, you define it and
8 say this is what we want to have the funeral
9 -- and then that would be like paragraph 1.
10 Paragraph 2, you're thinking still of the
11 regulation. You still have to do thinking to
12 address the issue of their funeral
13 establishment. I think it would be -- I mean,
14 I don't know if you want to do this, but I
15 don't think there is anything wrong with
16 saying that this requirement only applies to
17 somebody who is the owner of a funeral home.
18 I mean, the statute can't require something
19 that's impossible. And it's one of the
20 purposes of regulations is to save statutes
21 that on their face might look impossible. So,
22 I don't think there's anything off the top of
23 my head saying that this -- when it says their
24 financial -- their funeral establishment, we
25 are interpreting that to mean that this is

1 only required if you are the owner of the
2 funeral establishment because that's what
3 "their" means. If you're the employee, if
4 you're the stockholder, you don't have to do
5 it. And I'm not saying you want to do that,
6 but I think that is a possible loophole.
7 MR. McCULLOCH: Well, some folks may
8 not want to have their place of business go
9 through that just to get -- just because one
10 of their employees wants to become -- sit on
11 the State Board.
12 MR. OTTO: That's right. And like I
13 say, you work for an SCI firm, you know, does
14 that -- you know. So, again, I think it's
15 within the realm of possibility for this Board
16 to make a regulation to say that sentence only
17 applies if you own a funeral home because it
18 says "their funeral establishment." So, if
19 you don't own a funeral home, this sentence
20 doesn't apply to you. Now, the downside to
21 that is now you've got people that own a
22 funeral home are being held to a higher
23 standard than somebody who doesn't own a
24 funeral home, but --
25 MR. McCULLOCH: Maybe they should.

1 MR. OTTO: It is what it is.
2 CHAIRMAN: Backup?
3 MR. KRAUS: I was going to say I'd
4 certainly agree that there's opportunity here
5 for those terms to be defined. I think one
6 other thing to think about -- and I don't know
7 the answer to this, but with regard to 333.151
8 that we've been talking about, that regards
9 the Board membership and appointment of Board
10 members to the Board, which, in that process,
11 the Board itself doesn't have a role. So, is
12 -- with regard to making rules with regard to
13 that section, I think it should be considered
14 since, of course, all rule-making goes up
15 through the Division, through the department,
16 so all the agencies are consistent in the
17 rules that they propose, is that section
18 something that the Board should be making
19 rules on or maybe that -- or should that be
20 the entity that makes those appointments --
21 the governor's office? I don't know the
22 answer to that. I'm just throwing that out
23 there as something to consider. I mean, maybe
24 they are considering some rules, and what we
25 would come up with is different than what they

1 would come up with. I don't know, but I
2 think that's important to think about.
3 MR. OTTO: And kind of off what you
4 just said -- Don Otto again. It doesn't say
5 you have to pass an audit or it's a very good
6 audit or the auditor did a good job. It
7 doesn't say any of that. The governor can
8 appoint whoever the governor wants, and the
9 Senate approves them, whoever they want. So,
10 I mean, I think it's the Realtors Board -- I'm
11 not -- Sam is not here. I think he would
12 know. I think the Realtors Board, they have
13 to go through an audit after they're appointed
14 and confirmed. Well, what do you -- they've
15 already been appointed and confirmed, so what
16 do you -- so, to some extent, it may -- I
17 mean, it says you submit an audit. As long
18 as you define it in a reasonable way, somebody
19 submits it, well, you don't have the authority
20 under the -- this Board does not have the
21 authority under the statute to say, no, sorry,
22 you can't be on the Board because we don't
23 think this is a good enough audit. That's up
24 to the governor's office to decide whether or
25 not you've done a good enough audit, and even

1 if they don't like the audit, they can still
2 appoint you, because you can't constrain the
3 -- I don't the constitution would constrain
4 the governor, anyway, and I don't think this
5 does that. So --
6 MR. McCULLOCH: Well, just so you know
7 my position on this, I think it's a good idea
8 to expand the Board; okay? My problem was,
9 and the way I read what originally came out of
10 this, was that you're trying to keep that from
11 happening; okay? So, now, everybody has
12 realized that that's a mistake, and so, we're
13 going to try to manipulate everything and make
14 it work. That's fine by me. And we'll do it
15 here under this rule-making. It sounds like,
16 you know, you listen to these folks that are
17 smart, and they know how to do that, and they
18 can make it work.
19 REPRESENTATIVE MEADOWS: I'm sitting
20 between two attorneys.
21 MR. McCULLOCH: Yeah. They know how
22 to do that, and that's good.
23 (Several people talking simultaneously.)
24 MS. DUNN: Brad, you're acting as such.
25 REPRESENTATIVE MEADOWS: Regretfully,

1 I have to leave. My meeting with the governor
2 starts in about 23 minutes, so --
3 CHAIRMAN: Well, we appreciate you
4 coming today and the dialogue and I'm sure
5 we'll have more.
6 REPRESENTATIVE MEADOWS: And thank
7 you. I'll see all next week. And I strongly
8 concur on what these gentlemen were saying
9 here. I mean, I think that they're -- the
10 audited financial statement was the actual --
11 where we were actually going with this, and it
12 wasn't that I was trying to -- we were trying
13 to restrict the Board. That was not the case.
14 We just felt that the people that are on this
15 Board should be held to a higher standard, and
16 I wholeheartedly agree with that and --
17 wherever you're at. And that's why all of you
18 gentlemen are here -- and ladies are here for
19 that reason.
20 CHAIRMAN: I think everyone in this
21 room would agree with the thought that it
22 leads to the higher standard, but --
23 REPRESENTATIVE MEADOWS: Yes, sir.
24 Absolutely.
25 CHAIRMAN: That's where we need to be,

1 so --
2 REPRESENTATIVE MEADOWS: Thank you
3 very much.
4 CHAIRMAN: We appreciate you coming.
5 MS. DUNN: Thank you.
6 CHAIRMAN: All right. I know some of
7 you took a break, but let's take an official
8 one for about -- really fast, and come back.
9 (Off the record)
10 CHAIRMAN: I've been reminded and
11 asked to announce we're going to have a lunch
12 break at noon, so the Board will be going back
13 into closed session, too, at that point, and
14 then we'll pick it up at 1:00; is that what
15 you said? So, there will be a break from
16 12:00 to 1:00 and then come back.
17 MR. STALTER: How long do you plan on
18 going this afternoon?
19 CHAIRMAN: Well, we had 22 pages of
20 all that. I don't know if we'll get to the
21 end of that or not, but --
22 MR. SPEAKS: We're on page 1.
23 CHAIRMAN: Well, actually, about four.
24 (Several people talking simultaneously.)
25 MS. DUNN: Don has a question.

1 MR. OTTO: Yes. It's been a dozen
2 years since I served on a Board. Do you
3 still have to fill out that
4 financial-disclosure form?
5 MS. DUNN: Every year.
6 MR. OTTO: Well, I'll draft something
7 to throw out to people and get it to you
8 Friday, but what if we define audited
9 financial statement as the form that is
10 required -- that form that's required except
11 you get a CPA to sign off on it or something,
12 says this is audited, see if that -- see what
13 people think about that.
14 MR. McCULLOCH: The problem is with a
15 CPA, when you say audited, that's a full --
16 MR. OTTO: Yeah. But we wouldn't --
17 we would just say we defined audited as this
18 form that has been reviewed and signed off on.
19 Because on that form, don't you list here's
20 all my stocks? I mean, here's anything that
21 could be a conflict of interest. And, of
22 course, you would -- obviously, people need to
23 know that you're a stockholder of APS. That's
24 a disclosure thing. And I'll try drafting
25 something up and see if people like it. But

1 what I'm thinking is to say, for purposes of
2 this definition, audited financial statement
3 is the disclosure form that's already required
4 that has been reviewed by an independent
5 accountant or a CPA to verify the statements
6 on there.
7 CHAIRMAN: Okay. That's fine.
8 MR. OTTO: And see --
9 MR. REINHARD: Well, it's not going to
10 fly in my book because I think the governor is
11 in charge of that and that's part of his --
12 let him take care of it. Why are we going to
13 make a rule about something he's going to do?
14 I'm not doing that. That's disrespectful to
15 the governor, and the Board. I don't want to
16 see anything he writes, period.
17 MS. CLARKSTON: I'm not an attorney --
18 (Several people talking simultaneously.)
19 MR. OTTO: Connie, what I said is I'm
20 going to draft something up. Well, my thought
21 was -- I mean, I'll draft it up so nobody --
22 (inaudible.)
23 (Several people talking simultaneously.)
24 MR. OTTO: For purposes of 333.151,
25 audited financial statement shall mean the

1 disclosure form that is currently used or
2 something like that.
3 (Several people talking simultaneously.)
4 MS. CLARKSTON: Based on the
5 discussions I heard a while ago and what I've
6 heard from Earl, I don't think that that's a
7 far stretch at all to clarify it. But, again,
8 I also recognize that we also probably need to
9 run it through the governor's office because
10 -- (inaudible.)
11 (Several people talking simultaneously.)
12 MS. CLARKSTON: Now, if you said -- if
13 the board said audited financial statement
14 shall mean full-blown audit and the results
15 of, that might be --
16 MR. McCULLOCH: I think you'd have a
17 hard time.
18 MS. CLARKSTON: I think so.
19 MR. OTTO: I'll come up with a couple
20 different versions and submit them as things
21 for people to think about.
22 (Several people talking simultaneously.)
23 MR. REINHARD: Well, I think we need
24 to hire a firm to read the audit report from
25 the first firm so they can verify that it was

1 a right and good audit and then we'll go from
2 there, so it takes two to actually get this
3 done. So, that adds more expense to the
4 individual, so we're up to about $150,000.
5 We're definitely on the Board for the rest of
6 our lives.
7 (Several people talking simultaneously.)
8 CHAIRMAN: Okay. Let's get back on
9 track. I know we were, but we aren't. All
10 right. Which section is actually the next
11 section? Are we at 333.091?
12 MS. DUNN: Yes.
13 MR. KRAUS: Yes. Hopefully, this is
14 fairly straightforward, about displaying a
15 license. It must be displayed and recorded.
16 I think most boards do set out in rule what
17 that means so that it makes it easier on the
18 inspectors when they go -- when they're out
19 there. What the person does have to do and
20 what they don't have to do, and then --
21 CHAIRMAN: Mr. Reinhard?
22 MR. REINHARD: I definitely say ring
23 binders are out on tables.
24 CHAIRMAN: I agree.
25 MR. REINHARD: Okay. How about put

1 the damn things on the wall someplace in a
2 public area?
3 CHAIRMAN: Actually, I think, now,
4 this may have to be addressed in this
5 specific, but I know at some point in time, we
6 addressed that in another issue that said
7 that's where they had to be. Now, will that
8 automatically fall under this or has this got
9 to be something special? We addressed that
10 issue. We had problems with that and we had --
11 MR. KRAUS: And addressed that by rule
12 or --
13 CHAIRMAN: And we -- well, did we
14 address that by rule? How did we do that,
15 Becky?
16 MS. DUNN: The rule doesn't say not in
17 notebooks. It just says displayed.
18 MR. REINHARD: Well, then we're going
19 to define displayed -- on a wall.
20 CHAIRMAN: I thought we did. I
21 thought we got to the wall.
22 MR. KRAUS: And some boards say on the
23 wall in a prominent location in an area
24 accessible to the public, those types of
25 things.

1 MR. EGGEN: I thought it said in
2 public -- in a public area.
3 MR. REINHARD: In a public area.
4 MS. DUNN: Yeah.
5 MR. EGGEN: In an area accessible to
6 the public. I thought that's what it said.
7 I don't have it here in front of me, but --
8 MR. REINHARD: See, we really kind --
9 (inaudible) -- on this because this hits a
10 little sore point with the Board. There have
11 been some licensees that just don't want to
12 put them licenses up.
13 MS. DUNN: Very few people argue with
14 -- about this. Some argue because they think
15 that license is ugly, and 400,000 licensees
16 that are licensed by the this Board, including
17 doctors and CPAs, use the same format of the
18 license.
19 MR. OTTO: My favorite is the ones
20 that have them right here and the door is open.
21 MS. DUNN: So, we can define that and
22 we'll -- moving on.
23 (Several people talking simultaneously.)
24 CHAIRMAN: So, look at that. Look at
25 that. Check current law.

1 MR. McCULLOCH: I know when I go into
2 a place that's licensed, I -- the first thing
3 I do is go try to find that license hanging
4 on the wall. Then I know they're real.
5 MR. MAHN: Well, you've always been an
6 advocate of everybody being licensed.
7 MR. KRAUS: Very nice.
8 CHAIRMAN: Any other questions on
9 licensure display from the Board? Moving on.
10 MR. KRAUS: 333.101. Board may enter
11 premises to inspect. Let's see. May want to
12 clarify this includes any place where records
13 are stored regardless of the format including
14 electronic records, and also address consent
15 to off-site -- access off-site locations where
16 files may be stored. And then employees may
17 allow such access and consent, and also time
18 frames within which access must be granted.
19 CHAIRMAN: Does anyone see that the
20 word "enter" needs broadened? Comment, or do
21 we have enough authority just with that?
22 MR. KRAUS: When enter is really just
23 a place to stick the comments.
24 CHAIRMAN: Right.
25 MR. REINHARD: I think it's good.

1 CHAIRMAN: Go on or define it? Yeas,
2 nays?
3 MR. MAHN: Yea.
4 CHAIRMAN: Define it or go on?
5 MR. MAHN: Go on.
6 CHAIRMAN: Go on? John?
7 MR. McCULLOCH: Go on.
8 CHAIRMAN: All right. So, go on.
9 They say it's good enough.
10 MR. REINHARD: What do you think, Don?
11 Sorry, Chairman. I mean, you've got to go in
12 these places. What do you -- is that broad
13 enough?
14 MR. EGGEN: Well, I mean, it's written
15 here and it's also on their renewal and
16 application that they are giving up -- that
17 they sign that their premises will be
18 inspected, so I don't think it needs to be
19 clarified. I think if you clarify it, then
20 you may restrict it.
21 MR. REINHARD: Sorry, Chairman, but I
22 thought I would just ask the guy that's got to
23 go in.
24 CHAIRMAN: That's okay. That's why
25 we're all together here. The next page.

1 MR. KRAUS: And we kind of talked
2 about this section, 333.151, some already. Do
3 you want to do any more on that now? I mean,
4 what I think -- I think it would be a good
5 idea to clarify with the department and the
6 governor's office as to where they're coming
7 from on this, because if they say, well, we're
8 going to do a bunch of rules on that, then
9 should the Board do anything? I don't know
10 what they'll say, but that's what I would
11 suggest.
12 MR. McCULLOCH: So, just wait and see
13 what they opt to do; is that what you're
14 saying?
15 MR. KRAUS: We can check to see if
16 there's any direction at all from the
17 department or the Board as to what other plans
18 are.
19 MR. McCULLOCH: Okay.
20 CHAIRMAN: Go on?
21 MR. REINHARD: Go on.
22 CHAIRMAN: Everybody, go on?
23 MS. DUNN: So, we were okay with that,
24 what -- okay.
25 CHAIRMAN: Everybody says fine, so

1 check it out.
2 MR. KRAUS: 333.221, Board
3 compensation and employees. Let's see. This
4 was the change including legal counsel. I
5 mean, you could consider defining
6 qualifications for legal counsel, but I really
7 don't know that that's necessary because if
8 they're an attorney, they're going to have to
9 be a member of the bar already and in good
10 standing. But if you want to set out any
11 particular criteria, that's where it would go
12 or what it would be associated with.
13 MR. REINHARD: Go on.
14 MR. MAHN: Go on.
15 CHAIRMAN: They say okay. John, you
16 okay?
17 MS. DUNN: That was okay?
18 CHAIRMAN: Yeah.
19 MR. KRAUS: Retail exception on page 8,
20 333.251, retail exception. May want to spell
21 out casket stores are okay and define them,
22 spell out that a preneed is needed to do a
23 preneed, preneed license is needed to do
24 preneed, covered in statute, but may be useful
25 or may be confusing, so very broad thought

1 there.
2 CHAIRMAN: Any comment? Leave it
3 broad or narrow it up? Don Otto?
4 MR. OTTO: Well, you're right. You
5 may not want to touch this, but that's really
6 bad language there. "Simply." What does
7 simply mean?
8 MR. KRAUS: Not complicated.
9 MR. OTTO: Yeah. I mean, this does
10 not apply to any person simply engaged; does
11 that mean if that's all they do, that's easy,
12 but what if -- you know, I don't know.
13 That's just a bad word in there.
14 CHAIRMAN: Are you good at looking at
15 that to see what we might --
16 MR. KRAUS: And, I mean, the "simply"
17 language was there already. It was there
18 before. I mean, I'm happy to do whatever you
19 want. I don't know if there's a big need for
20 changes there, but --
21 MR. OTTO: It's probably better not to
22 change it.
23 CHAIRMAN: You guys' comment was what?
24 MR. OTTO: I don't now. I just wanted
25 to throw out the word "simply" if anybody

1 thought something needed to be done about
2 that, because I hate that word in there, but I
3 don't know if there's anything you can do
4 about it, with a further definition, or if it
5 might make it worse, but I just wanted to
6 raise it that that --
7 CHAIRMAN: So, "simply" comment raised.
8 Anything else? Not hearing much issue, just
9 move on and leave it?
10 MR. MAHN: Move on.
11 MR. McCULLOCH: Leave as is.
12 MS. DUNN: Leave it. Okay.
13 CHAIRMAN: Okay. The next page.
14 MR. KRAUS: Cemetery exception, page 9.
15 Except cemeteries to the extent they fall under
16 endowed care in Chapter 214. Of course, there
17 are a number of proposed changes to that
18 section that did not pass into law.
19 MS. DUNN: Connie, do you have any
20 comments on this because this was discussed
21 more at the 214 meetings that we were not at.
22 MR. STALTER: Sorry.
23 MS. CLARKSTON: No. Go right ahead.
24 MR. STALTER: Bill Stalter. You know,
25 we were looking for parallel exemptions, you

1 know, one in 214 that kind of mirror what we
2 get in 436. And, really, at the time, we
3 didn't know which -- where everybody was going
4 to go. And the next time we got a 214
5 exemptions, they didn't make it. They got --
6 you know, it's probably such that they didn't
7 make it. With regard to this one, you know,
8 the issue is, okay, if you have a cemetery
9 preneed contract, payments don't go in endowed
10 care. I mean, endowed care is for the care
11 of the space, so you don't put in payments on
12 a preneed contract for endowed care. Now, you
13 do have segregated accounts, but they got
14 wiped out in the new statute, too. So, in a
15 sense, you know, what we've got here, we've
16 got in what cemetery -- how do we exempt
17 cemeteries from 436 or under what
18 circumstances, and how can you make it work
19 under this language?
20 MR. OTTO: Are they coming back to
21 214, I assume, again this year?
22 MR. STALTER: I would think so.
23 MS. CLARKSTON: You know, I have not
24 heard.
25 MR. STALTER: What?

1 MS. CLARKSTON: I have not heard.
2 MR. STALTER: And it really kind of
3 depends as far as whether they can work out
4 their own problems and so forth.
5 MR. KRAUS: Yeah. They may come back
6 again, and then if we're in the middle of
7 trying to do some rules to try to mop that
8 up, then I don't know. That's potentially
9 very messy.
10 MR. STALTER: You're going to have
11 enough people that sign up for licenses that
12 you're -- I mean, do you really want to have
13 cemeteries under there, too?
14 CHAIRMAN: Say that again.
15 MR. MAHN: Do you want to license
16 cemeteries?
17 MR. STALTER: Yeah. I mean, how far
18 do you think you're supposed to regulate a
19 cemetery and preneed?
20 CHAIRMAN: Well, from a knee-jerk
21 reaction, I guess I would say if they're
22 providing services that are required that a
23 funeral director -- if they're preneeding
24 funeral director required -- I don't know if
25 "required" is the right word I want, but

1 mirroring the same thing the funeral director
2 would require, then I would think they would
3 fall under that.
4 MR. STALTER: Well, and are you saying
5 that if they provide services, that would be
6 defined as funeral directing?
7 CHAIRMAN: Yes.
8 MR. STALTER: Or are you talking about
9 all the other merchandise that they also sell
10 that you also sell?
11 CHAIRMAN: Well, but we can't control
12 that thought, can we, as I understand it?
13 MR. STALTER: Well, are you saying
14 that -- can you control whether -- caskets for
15 sales?
16 CHAIRMAN: That's what I said. You
17 can't control that thought.
18 MR. STALTER: You can -- for 436, you
19 sure as hell can.
20 MR. OTTO: If it's preneed.
21 MR. STALTER: Yeah.
22 CHAIRMAN: Oh, well, yeah. Preneed.
23 MR. STALTER: That's all we're talking
24 about.
25 CHAIRMAN: Okay.

1 MR. STALTER: I mean, because you're --
2 there's two things here, licensing, because
3 you have to address that under 333, and then
4 436 when they're exempting them for regulation
5 of the preneed transaction.
6 CHAIRMAN: So, I would follow suit
7 with -- if we were in a preneed sense be the
8 casketing store thought, I would sure think we
9 would do the same thing at a cemetery.
10 MR. STALTER: Well, but, you know, if
11 they've got regulations under 214. In other
12 words, you know, does the cemetery have to
13 comply with both 436 and 214?
14 CHAIRMAN: I don't now how to
15 challenge that one, so --
16 MR. McCULLOCH: My only deal on that
17 would be that if the cemetery is going to sell
18 an outer container or a casket or -- they
19 would have to fall under the same restrictions
20 I do; correct?
21 MR. STALTER: Well, that's what we're
22 trying to figure out. I mean, if they've got
23 -- cemeteries under 214 have trusting laws. I
24 mean, why should they have to also then comply
25 with 436? That's the question. Because you

1 can look at other states, you know. You can
2 look at Illinois.
3 MR. McCULLOCH: Well, I mean if they
4 don't mirror, I mean, that's going to be a
5 problem because I'm going to become some kind
6 of a cemetery if their laws are better; you
7 know what I mean?
8 MS. CLARKSTON: Through the roundtable
9 discussions this summer, that was where the
10 conversation went was if they were selling
11 preneed, they would become -- go under Chapter
12 436. If they were not, they stayed under 214.
13 The minute they crossed, they need to become
14 licensed by the Board. That was the thought
15 process. Now, their law didn't pass, so --
16 MR. McCULLOCH: Yes.
17 CHAIRMAN: But wasn't the key word --
18 MR. McCULLOCH: And they were in
19 agreement with that; right?
20 MS. CLARKSTON: That was where the --
21 (Several people talking simultaneously.)
22 MS. CLARKSTON: The majority there --
23 MR. STALTER: Define what substantial
24 -- are you saying identical or similar or what?
25 CHAIRMAN: Give him no idea.

1 MR. McCULLOCH: Well, I mean, it just
2 seems that it would be fair if they're going
3 to go out and sell and preneed arrangement
4 just like I would as a funeral home or a
5 preneed company, whichever, they should have
6 to follow -- have the same trusting
7 requirements and the same guidelines I would
8 have to follow.
9 MR. STALTER: And maybe I'll take
10 their side in this. The difference between a
11 funeral preneed sale and a cemetery preneed
12 sale is that that guy has come in and bought
13 a space first. He's made a decision, he's
14 going to do a traditional funeral. But, I
15 mean -- and he also knows where he's going to
16 go for the burial. It's going to be a lot
17 more difficult for him to change his mind
18 about what he's going to do. So, you know,
19 each is a different thought process after
20 there's been a cemetery preneed sale, and
21 after we've done that, they might buy -- they
22 might add things to it, but down the road.
23 Plus, they also can deliver before death,
24 which you cannot.
25 MR. McCULLOCH: But, I mean, if you

1 deliver, then it's not preneed again; right?
2 MR. STALTER: Is it? Is it?
3 MR. McCULLOCH: Well, I mean, in my
4 simple mind, it's not.
5 MR. STALTER: There are different
6 types of cemetery preneed, and some of them do
7 them differently. I mean, some, once you --
8 you know, this is how we got into it with
9 segregated counselors for Newcomers,
10 basically, is if you didn't want to make a
11 delivery because the family didn't want to see
12 the marker on the space, so you just
13 segregated the funds, you know, and just held
14 it out there till they were ready to take it.
15 So, under those circumstances, what do we have
16 to do? I mean, do we -- you know, do we have
17 to trust wholesale, you know. We know they're
18 going to come in at some point and take
19 delivery, you know. Why should we have to
20 deliver -- have 80 percent or 85 percent and
21 accrue all the income?
22 MR. McCULLOCH: If they've already
23 purchased the stone and it's there; is that
24 what you said?
25 MR. STALTER: Yeah. Yeah. They've

1 paid all the families, but the family says I
2 don't want to see my name on a marker when I
3 go to --
4 MR. McCULLOCH: Well, the marker,
5 that's not part of this, is it -- of the
6 preneed part?
7 CHAIRMAN: It could be.
8 MR. McCULLOCH: Do they include
9 markers?
10 MR. STALTER: Look at the funeral
11 merchandise in your definition.
12 MR. McCULLOCH: Do they include
13 markers?
14 MR. STALTER: Yes, it does.
15 CHAIRMAN: Yes. How did -- you were
16 talking about segregated accounts or something
17 there. I mean, I'm trying to think backwards
18 from funeral director. I mean, yeah, they're
19 going to take delivery on it someday or
20 whatever you just said there, and I'm
21 thinking, well, yeah, they're going to take
22 delivery of the preneed someday.
23 MR. STALTER: Yeah. Well, what
24 happened was segregated down. It was written
25 in the '90s. I wrote the statute, what it

1 was that prior to about 1990 or '91, 214 said
2 that if you sold the marker, you had to
3 deliver it within a reasonable time after the
4 purchase price was paid in full.
5 CHAIRMAN: So, the key words being a
6 reasonable time.
7 MR. STALTER: Yeah. I mean, you had a
8 lot -- you know, reasonable time, and we're
9 always arguing about what that meant, 90 days
10 or, you know, whatever. But then it got to a
11 point where, you know, actually, I drafted
12 these forms, you sent it out to the family and
13 say here's what we call our installation
14 instruction, you know. We want to use this to
15 order the marker and delivery it, and the
16 families wouldn't return it. They'd say I
17 don't want to set it yet. So, then we'd say,
18 okay, we can't comply with 214; what can we
19 do? We didn't want to create a trust because
20 we don't pay a trustee's fee, so what we did
21 is, we segregated the funds. If we could put
22 over here in a bank account, not a trust, just
23 a bank account, and we had 110 percent over
24 here, the auditor for the cemetery come in and
25 take a look and say, yes, they've got enough

1 to cover their markers; okay? And that's what
2 the segregated account was for, to cover the
3 marker costs that we could show you that we
4 had enough setting in a trust in a bank. But
5 that got -- that was eliminated in this latest
6 fiasco. It's not out there anymore.
7 MR. McCULLOCH: So, you can't do that
8 anymore?
9 CHAIRMAN: Okay. Well, just from a
10 knee-jerk reaction and only my own personal
11 thought, yeah, I think probably there are
12 going to be some circumstances where a
13 cemetery is going to have to conform to 214
14 and 436. That may not be -- that may be a
15 legal challenge and may not be right, but, I
16 mean, I don't see how you can just say it's
17 one way or the other, at least at this point.
18 MR. STALTER: Better start talking to
19 that guy.
20 MR. REINHARD: He's the chairman. He
21 can do anything he wants to.
22 MR. STALTER: You know, and that's
23 what got you in trouble when you were the
24 chairman.
25 MR. REINHARD: That's why I'm not

1 chairman anymore.
2 CHAIRMAN: I may not be, either. So --
3 MR. McCULLOCH: So, what do you think
4 is fair? Since you understand both sides of
5 it, I don't quite understand all the cemetery
6 side --
7 MR. STALTER: I think that when we
8 talk about substantially similar -- well,
9 first of all, I don't know if anybody has been
10 paying attention, but when in 436 we said
11 identical, there were a couple of us saying
12 no, no. I mean, it will never be identical.
13 I mean, there are differences in the way
14 cemetery sales are trust and so forth. If you
15 say substantially similar, what are you
16 talking about? Are you talking about trusting
17 or are you talking about oversight? Two
18 different issues. And I think that you can
19 make an argument that cemeteries can make a
20 very valid argument about trusting percentages
21 should be different. Then it comes down to --
22 and what you're all saying -- are they playing
23 by the same rules? You know, basically, we
24 have to do these things. Should they have to
25 do these things? But you have to understand,

1 cemetery accounting for preneed is a hell of a
2 lot more difficult than what you have to do.
3 CHAIRMAN: Don?
4 MR. OTTO: I would say for purposes of
5 trying to get regulations out in a short time
6 frame that you have, that this would not be a
7 good one to do regulations on right now.
8 MR. STALTER: Now, I beg to differ
9 because I've got a bank that's trying to --
10 who has cemetery accounts out there trying to
11 figure out what to do with them. Do I have
12 to put them into 214 or can I put them in 214
13 and not 436?
14 MR. REINHARD: Then we need to address
15 it.
16 MR. MAHN: Bill, what kind of things
17 are they are they prefunding? I mean, I don't
18 own a cemetery and I don't get this headache.
19 What are they --
20 MR. STALTER: Well, here's -- we've
21 got one and it has what we call six buttons.
22 So, you know, you've got opening and closing.
23 MR. MAHN: Right.
24 MR. STALTER: So, you've got opening
25 and closing.

1 MR. MAHN: So, they've preplanned an
2 opening and closing.
3 MR. STALTER: You've got --
4 (inaudible) -- markers.
5 MR. MAHN: Right.
6 MR. STALTER: Engraving.
7 MR. MAHN: Right.
8 MR. STALTER: Urns.
9 MR. MAHN: Right.
10 MR. STALTER: And I've got some that
11 want also then to do a separate opening --
12 installation, like, for the marker or on the
13 bronze, so they've got, like, seven buckets.
14 MR. MAHN: As a cemetery owner, I think
15 anything that they're going to not do that day
16 when they sell the grave and all that that's
17 going to be done down the road, whether it's
18 when the person dies or when they decide that
19 it's okay, I think it ought to go right into
20 a mirror prearranged just like 436.
21 MR. STALTER: But you see a lot of
22 cemeteries --
23 MR. MAHN: Well, I know what a lot of
24 cemeteries want to do, they want to rob the
25 money.

1 MR. STALTER: Well, I would say that --
2 MR. MAHN: And that's what happens.
3 That's why all these cemeteries around
4 everywhere nobody wants to take care of, or
5 you've got the Cassity ones over there in
6 Illinois that they squandered all the money.
7 Why would the next owner want to come in and
8 have to do all that stuff wholesale because
9 they've skimmed all the money off the top?
10 They don't want to, you know.
11 MR. STALTER: See, the smaller
12 cemeteries, they'll never want to be in the
13 trust because what they're going to do --
14 they're not going to sell all those seven
15 buckets.
16 MR. MAHN: Well, they shouldn't be
17 selling at all, they ought to stay out of it
18 altogether. They ought to sell graves and
19 headstones and mausoleums. They don't need to
20 be in vaults and caskets and all that other
21 stuff. As an owner, why just complicate
22 things? I mean, it really does. I mean,
23 they just -- I think they're stepping over
24 their line. That's just my personal opinion
25 as a cemetery owner.

1 MR. OTTO: Not that this is
2 controlling, but I can tell you everybody we
3 talked to over at the Capitol when we were
4 doing Senate Bill 1, when the question came
5 up, if two people are doing the exact same
6 product or service, they ought to be treated
7 the same way. And that was voiced time and
8 time again over there, that if you're selling
9 -- you know, if you're selling a preneed XYZ
10 thing and the guy across the street is selling
11 a preneed XYZ thing, you ought to follow the
12 same rules on keeping -- on protecting the
13 consumer's money. Now, that's not
14 controlling, but I can tell you that that is,
15 in my opinion, was the sentiment over there
16 this year, is that if, you know, a funeral
17 home is selling a vault preneed, then a casket
18 store is selling a vault preneed, or a church
19 is selling vault preneed, and you're taking
20 somebody's money, they all ought to follow the
21 same rules.
22 MR. McCULLOCH: So, that was really my
23 question. How is it different then for the
24 cemetery when they sell that vault than if I
25 do?

1 MR. STALTER: Before 296, and the
2 cemetery bill was 296, it is that we didn't
3 have a trusting provision under 214. All you
4 had was -- (inaudible.) And if a cemetery
5 wanted to sell vaults, then they could
6 establish a 436 account to do so.
7 MR. McCULLOCH: Okay.
8 MR. STALTER: So, now you -- now, with
9 296, segregated accounts are wiped out and you
10 have an 80-20 trusting, but that's basically
11 all we've got there. We don't -- you know,
12 where is the mechanism around that that you
13 all are grappling with with SB 1? Part of it
14 is, I mean, if you decide that you're going to
15 govern this transaction, and then cemeteries
16 get their act together and get it all passed,
17 then you have one year of regulating cemetery
18 sales that will be gone next year. You know,
19 when we have conflicting statutes like these
20 two exemptions somebody -- Earl has to be able
21 to interpret them so that they may be done
22 consistently, you know. They have to find a
23 way that they will not conflict. So, you
24 might think that you should regulate cemetery
25 sales. Cemetery Division might decide you

1 shouldn't. Some way or other, Earl, he's got
2 to figure out how to enforce both of those
3 without a conflict.
4 CHAIRMAN: And maybe this is a good
5 time to acknowledge, we've been kind of
6 conversing here on a couple of this. Explain
7 what you just said about a couple ways to do
8 that.
9 MR. KRAUS: Well, we talked about a
10 number of different things, so I'm trying to
11 focus in on what -- the -- I mean, I would
12 expect that everyone probably thinks that
13 people doing the same thing that is the same
14 thing should be treated the same way. Now, as
15 to whether people fall into this exemption or
16 not, I mean, one approach could be when an
17 individual situation comes up, look at them
18 and see if they fall within the exemption as
19 set by the statute. Another way to approach
20 that is to talk about a lot of the potential
21 situations as we are now and try to come up
22 with a rule that we hope will cover all of
23 those. I kind of think that, you know,
24 especially with the potential for -- you know,
25 since there was legislation this last session

1 and may very well be legislation about it this
2 next session, if we -- and the fact that if a
3 rule is done that explains what this statute
4 means according to the Board, and whatever
5 group isn't happy with that, whatever it is,
6 then it's wide open to challenge the rule
7 because you say, well, you're going beyond
8 what the statute says. You're making up law
9 because you're going beyond the statute
10 because the statute doesn't mean that, which
11 would be, essentially, the same challenge --
12 your interpretation of challenging your
13 interpretation of the statute if you address
14 it in an individual case that comes before the
15 Board, and then the Board says, well, in this
16 case, we think it means this. No, that's not
17 what the statute means. Here's a challenge.
18 So, I think you can face the same challenge in
19 either event. I personally -- not that it
20 matters because I'm not a Board member, but I
21 personally could see so many different fact
22 patterns coming into this exception, not
23 meeting the exception, maybe they do and maybe
24 they don't depending on what they're doing and
25 what their situation is, that it would be hard

1 to promulgate a rule that is effective or
2 helpful today.
3
4 CHAIRMAN: I see Bill going a lot like
5 this.
6 MR. STALTER: It is. I mean --
7 CHAIRMAN: Amen.
8 MR. STALTER: -- getting into that.
9 In one sense, if you read this set, this
10 provision very literally, it's really
11 impossible to comply with. And you can
12 exclude postsales to the extent that the funds
13 went into a segregated account, but going
14 forward, that's not an option. I mean, it's
15 gone.
16 MR. REINHARD: Well, how do you
17 address it then? I mean --
18 MR. STALTER: That's why I was just
19 hoping we would get to this when Tim was still
20 here.
21 MR. KRAUS: Legislatively.
22 MR. STALTER: Yeah.
23 MR. KRAUS: That is the way to address
24 it.
25 MR. OTTO: That's why -- I mean, I

1 don't think you can do a regulation that
2 solves the problem, and if you try, you might
3 find out halfway through it they've submitted
4 legislation which would make everything you've
5 done a waste of time.
6 MR. KRAUS: And if you try, then you
7 have a problem with your regulation and you
8 have litigation, so you have two problems.
9 CHAIRMAN: So, it sounds to me like
10 there is no fix at the moment.
11 MR. STALTER: I think you have to give
12 it thought. I don't know the answer.
13 CHAIRMAN: In this immediate, what do
14 we do right this minute.
15 MR. McCULLOCH: So, currently, a
16 cemetery, if they go out and sell a casket and
17 a vault --
18 MR. STALTER: Let's just say -- leave
19 that casket out of there because that's -- you
20 know, I think most of what we're talking about
21 here is on that vault sale, you know.
22 MR. McCULLOCH: Some do caskets and
23 they certainly can if they want to; right?
24 MR. STALTER: Yeah. If they comply
25 with 436.

1 MR. McCULLOCH: So, wanting caskets --
2 (inaudible.)
3 MR. STALTER: Well, let me say this.
4 Under the old law, the only thing you had was
5 a marker, you know. If they sold vaults or
6 caskets, under the old -- under old 214, they
7 should have been under 436.
8 MR. McCULLOCH: Fell under that?
9 MR. STALTER: Yeah.
10 MR. McCULLOCH: Okay.
11 MR. STALTER: And now, you know, it's
12 that -- you're going to -- you've got a
13 broader definition of merchandise -- cemetery
14 merchandise under 214.
15 MR. McCULLOCH: But, anyway, right
16 now, if they would sell that vault, do they
17 have to fund or put into a trust 80 percent?
18 MR. STALTER: Under the new one, if
19 they sell a vault under 214, 80 percent goes
20 into trust. And will accrue the income? Huh?
21 MR. McCULLOCH: I mean, that cemetery
22 is selling -- (inaudible.) No. Just kidding.
23 MR. STALTER: I know. I know.
24 CHAIRMAN: Okay, guys. Input?
25 MR. KRAUS: Well, I mean, you could

1 decide to move on for now and --
2 MR. McCULLOCH: I think we definitely
3 have to move on for now.
4 MS. DUNN: Because we're stuck.
5 MR. KRAUS: Yeah. But not that it
6 won't be revisited.
7 CHAIRMAN: So, yeses?
8 MR. MAHN: Well, most of the
9 cemeteries that's selling all that stuff will
10 really stir up a lot of things in their
11 communities. I mean, they're doing it just to
12 be a thorn in the side of the funeral home.
13 I know it has nothing to do with this law or
14 reg, but most people commenting on it don't
15 own a funeral home or a cemetery or understand
16 this being some apple butter. So, let's move
17 on.
18 MR. REINHARD: Well, we need to help
19 him. We need to help him or do something
20 about it.
21 MR. MAHN: Yeah.
22 MR. STALTER: Who is that? Help who?
23 MR. REINHARD: To help you --
24 MR. STALTER: I mean, I've got -- I
25 tell the banks what to do. I think I've

1 heard enough today to know how to advise my
2 banks, so --
3 MR. REINHARD: Okay. So, you can get
4 through this?
5 MR. STALTER: Yeah.
6 MR. OTTO: Yeah. Tell them to wait.
7 (Several people talking simultaneously.)
8 MR. REINHARD: And, Brad, how many --
9 what did you say? How many thousand is he
10 charging?
11 CHAIRMAN: So, the words were move on.
12 MR. REINHARD: It's that last class,
13 how to charge.
14 (Several people talking simultaneously.)
15 MR. KRAUS: All right. Page 10,
16 Section 333.315, provider license
17 requirements. And just a few comments out to
18 the side there. Now, this was discussed to
19 some extent last meeting and we did come up
20 with a draft rule -- emergency rule. Do you
21 want to start with that?
22 CHAIRMAN: Sure.
23 MR. KRAUS: Does everyone have that or
24 --
25 CHAIRMAN: Does everyone have that?

1 Is that the application-to-apply thing?
2 MS. DUNN: Which document?
3 MR. KRAUS: I'm talking about the --
4 well, the application to apply goes with it.
5 CHAIRMAN: Okay.
6 MR. KRAUS: But there is actually a
7 draft --
8 MS. DUNN: Is this it?
9 MR. KRAUS: Yes, that's it.
10 MS. DUNN: Okay. It's a document that
11 will say proposed emergency rule for notice of
12 intent to apply.
13 CHAIRMAN: Everybody got it?
14 MR. KRAUS: All right. So, we
15 discussed last time the need for dealing with
16 the transition from August 28th up until the
17 Board has something in place for people who
18 have to be licensed or registered to be
19 licensed or registered by the Board under the
20 new statute. So, this sets out how -- and
21 this, of course, isn't how the rule will
22 finally look, it's just the language itself.
23 Sets out how someone who intends to conduct
24 business, they will provide a notice of intent
25 to the Board. There is a draft form, also,

1 which I think you have. It's notice of intent
2 to apply for licensure/registration. It looks
3 like this. Let's see. We're looking at the
4 same version; right? I see a number of
5 versions. All right. You'll notice under sub
6 7, it has anyone who files a notice of intent
7 shall be authorized to engage in the practice
8 provided that they have timely filed their
9 application for licensure and/or registration
10 which shall -- then the authorization to
11 practice will be effective from the date the
12 Board receives the notice of intent and will
13 end when the Board issues a license or
14 registration or denies license or -- the
15 application, or -- and this is something that
16 I don't know that the Board talked about last
17 time, but will want to talk about -- or until
18 midnight on December 31st, 2009. And that's
19 to put in an outside here's a drop-dead, this
20 is when it ends, whether the Board does
21 anything or not. I don't know if that's
22 something the Board wants, so I wanted to
23 point that out.
24 MR. McCULLOCH: Is this where we were
25 talking about giving you extra time, though,

1 or is this different? We didn't want to tie
2 it down the end of October?
3 MR. KRAUS: This is the one where we
4 plugged in dates. Like, for example, under
5 sub 5, the notice of intent to file, has to
6 be completed and with the Board no later than
7 October 1, 2009. Now, that date is very
8 tentative. That's just a date that's plugged
9 in there, so we know we need to come up with
10 a date.
11 MR. McCULLOCH: Okay.
12 MR. KRAUS: You all may decide some
13 other date is much better.
14 MR. McCULLOCH: I got you. Okay.
15 MR. KRAUS: And that's the same with
16 the December 31, 2009, date on sub 7 is a
17 made-up date for whatever the Board wants to
18 use if the Board even wants a drop-dead time.
19 You may just not want to do that and just
20 leave that open and say it's effective until
21 the Board decides grant or deny.
22 MS. CLARKSTON: Do you have any idea
23 how many agents that are out there that would
24 be applying -- how many applications you would
25 be looking at?

1 MR. KRAUS: That's probably for Becky.
2 MS. CLARKSTON: Do you have any idea
3 about how many agents there would be?
4 MR. McCULLOCH: Do the insurance folks
5 have to file, also, if they an insurance
6 license?
7 MR. KRAUS: Anyone who intends to be a
8 seller, provider, or agent.
9 CHAIRMAN: I got the idea -- I had the
10 idea every funeral director that's going to
11 sell, every licensed insurance agent that's
12 going to sell, everybody; right? Everybody --
13 Don?
14 MR. OTTO: Yeah. I think somebody --
15 if all they're selling is insurance, no. I
16 mean, if they're an insurance agent and
17 they're just selling insurance -- if you're a
18 State Farm Insurance agent, no.
19 CHAIRMAN: Oh, right.
20 MR. OTTO: And, you know -- but if
21 they are selling it in conjunction with a
22 preneed contract, yes.
23 MS. DUNN: So, if it would say Dunn's
24 preneed funeral contract --
25 CHAIRMAN: Yeah.

1 MR. OTTO: But I might suggest if you
2 have a drop-dead date just for -- I would
3 throw out for consideration the July 1, 2010,
4 date which is the -- in Senate Bill 1, a
5 number of these provisions are not -- you're
6 not in violation. In Senate Bill 1, there is
7 already provision for a number of different
8 provisions that you're not in violation until
9 after July. I think it's July 1 or is it
10 June 1?
11 MR. McCULLOCH: July.
12 MR. STALTER: July.
13 MR. OTTO: July 1, 2010. I mean, just
14 for consistency purposes, that's just
15 something to think about.
16 MR. McCULLOCH: You know, I asked that
17 question last time, and Sharon didn't want to
18 discuss that. So, I mean, I wasn't sure why.
19 MR. REINHARD: Well, bring it up and
20 ask now. She's not here.
21 MR. McCULLOCH: Because I thought that
22 kind of took care of all this stuff, when we
23 were trying to figure out -- we really got to
24 that point. And you can do the emergency
25 rules. I understand all that. I mean, you

1 can do some of those things, but this is --
2 (inaudible.)
3 MR. KRAUS: Well, I mean, there's a
4 very particular provision that talks about
5 that. That's in 436 --
6 MR. OTTO: It's 436.435 on page 21.
7 MR. KRAUS: -- 435.
8 MR. OTTO: To the extent that any
9 provisions of this chapter which come into
10 effect on August 28, 2009, apply to trusts
11 governed under this chapter which are in
12 existence, so if you're a trust that already
13 exists, such trust shall be in compliance with
14 this chapter no later than July 1, 2010. So,
15 anybody that's got a trust out there that
16 exists already, they've got, theoretically,
17 until July 1, 2010, to be in compliance with
18 the statute. A new trust that wanted to open
19 up on August 30th would have to comply with
20 the statute immediately.
21 MR. KRAUS: And, of course, that date
22 in that -- in subsection 1 of 436.435 is
23 talking about trusts, it's talking about
24 Chapter 436. I mean, there are some limiting
25 language with regard to January 1, 2010,

1 whereas with regard to this proposed rule,
2 we're talking about implementing licensure as
3 set out in 333, which requires you to be
4 licensed if you're going to be a provider or a
5 seller or registered if you're going to be an
6 agent.
7 MR. McCULLOCH: Okay.
8 MR. KRAUS: And I think you're -- you
9 know, people are required to do that as of the
10 effective date of the law. So, I think it
11 matters what we're talking about as to when
12 the compliance comes into effect.
13 MR. McCULLOCH: That makes sense.
14 MR. OTTO: But I was just thinking if
15 you do have a drop-dead date, why not make it
16 the same.
17 MR. STALTER: Give yourself some more
18 room.
19 MR. KRAUS: That's an option. That's
20 an option.
21 MR. OTTO: Yeah.
22 MR. KRAUS: As to when people are
23 required to do things and what the Board --
24 how the Board is going to consider the interim
25 time. I think we built some proposed language

1 in that talks about discipline in sub 8,
2 because we talked about, well, just what about
3 just having a free period saying, well, until
4 this date then the Board is not going to do
5 anything. Well, the danger of that is, what
6 if you have some just awful offender doing
7 something that everyone just goes, oh, I can't
8 believe they're doing that. That's against
9 the law. It's a violation. It's terrible.
10 Well, yeah, but the rule says you're not going
11 to do anything to anybody until such and such
12 a date and we haven't reached that date yet,
13 they're scot-free. So, we tried to weigh that
14 and still build in the ability for the Board
15 to consider what it's going to do. I'll be
16 quiet now and let everybody read that language
17 since I don't know how much ahead of time
18 you've been able to look at it, so --
19 MR. McCULLOCH: You're talking about
20 eight?
21 MR. KRAUS: In sub 8, yeah.
22 MR. McCULLOCH: Yeah. That makes
23 sense.
24 MR. KRAUS: But, again, like Don was
25 saying, the dates are whatever you want the

1 dates to be.
2 CHAIRMAN: The only thing that I'm
3 hearing concern with is the drop-dead date;
4 right?
5 MR. OTTO: I'm just saying, just to be
6 -- I mean, since there are, clearly, some
7 things that don't kick in till July 1, it just
8 might be easier for everybody to use the same
9 date. I don't -- it's not necessary, but --
10 MR. SPEAKS: That way, you can keep it
11 straight.
12 MR. OTTO: Yeah. It's easier to
13 explain to people; they have one date to
14 remember instead of -- but it's not critical,
15 I don't think, but it's just easier.
16 MR. McCULLOCH: Does that help you,
17 Becky, by giving you more time to try to get
18 everything geared up and ready?
19 MS. DUNN: We'll just -- we'll have to
20 --
21 MR. KRAUS: And, I mean, and you don't
22 have to have a drop-dead at all. You could
23 just leave it as -- until the Board decides
24 grant or deny, and then they are either
25 granted and they have a license, or they are

1 denied and they don't, or you haven't decided
2 yet, in which case their notice of -- their
3 authority under the notice of intent continues.
4 CHAIRMAN: But that limits us then
5 where the other gives us -- expands our
6 ability; right? What you just finished, your
7 last statement there?
8 MR. KRAUS: It does.
9 CHAIRMAN: If we take that out, it's
10 just ongoing; right?
11 MR. KRAUS: That's true. That's true.
12 Of course, if you end up in a situation where,
13 you know, the Board doesn't have a quorum for
14 a period of time or there is some other
15 problem where the Board can't act or it
16 doesn't act, someone could end up operating
17 under a notice of intent for a long time,
18 which, you know, I think the Board intends
19 that to be a temporary thing.
20 MS. DUNN: Yeah. I'd say that was --
21 CHAIRMAN: (Inaudible.)
22 MR. KRAUS: So, it's just kind of a
23 fail-safe, but, yeah, there's advantages and
24 disadvantages to that.
25 MS. DUNN: John, I think what we have

1 to think about is #5. We haven't determined
2 what that is yet. We have to kind of think
3 about what we have to do, and we're short
4 staffed, and what we can really accomplish.
5 MR. McCULLOCH: So, this would be the
6 one that would cause you problems?
7 MS. DUNN: Yeah. We have to think
8 about that one.
9 MR. McCULLOCH: So, that's -- I mean,
10 that would be -- (inaudible.)
11 MS. DUNN: Uh-huh. That was just a
12 date they put in.
13 MR. McCULLOCH: Yeah.
14 MS. DUNN: That would probably not be
15 the date.
16 MR. McCULLOCH: Okay.
17 CHAIRMAN: Okay. We've really
18 identified two potential areas, I guess I'll
19 say, that we need to address those two dates.
20 Anything else in that emergency rule of intent
21 to apply that we need to at least address?
22 MR. STALTER: Referring to comments?
23 MR. McCULLOCH: I suggest that we move
24 the date of July of 2010.
25 CHAIRMAN: We can. You guys -- and

1 the drop-dead date; right?
2 UNIDENTIFIED: (Inaudible.)
3 CHAIRMAN: Oh, sorry.
4 MR. STALTER: Yeah. Just about the
5 content, not about the -- I mean, go ahead and
6 resolve that issue.
7 CHAIRMAN: Okay. Are you guys ready
8 to go with that?
9 MS. DUNN: Where is that date going to
10 be?
11 CHAIRMAN: This one.
12 MR. KRAUS: Sub 7.
13 CHAIRMAN: At least -- yeah. In sub 7.
14 MS. DUNN: Do you see any problem with
15 that, Earl?
16 MR. KRAUS: No. I think that's
17 whatever the Board wants it to be.
18 CHAIRMAN: Do you see, potentially, an
19 issue?
20 MS. DUNN: No. I've got to think
21 about this, what -- that makes you liable, but
22 I don't know the answer to that at the moment.
23 (Several people talking simultaneously.)
24 MR. KRAUS: Well, I don't -- I
25 wouldn't expect today that there be, okay,

1 final approval, here's how we're going to file
2 this. I would expect that as we go through
3 the different meetings and the different
4 sections, that, you know, we may have -- come
5 across something that gives us reason to refer
6 back to one that we've already addressed. And
7 then at the end, once we get through the
8 meetings and all the different sections, then
9 the Board say, okay, all those we talked about
10 and thought were good, yes, go forward and
11 have a vote at that time.
12 MS. DUNN: Okay.
13 MR. KRAUS: For final marching orders,
14 I guess.
15 MS. DUNN: So, other than dates, I
16 guess my question is, does this look good?
17 CHAIRMAN: Okay. So, the question is
18 being answered, other than the dates on this,
19 does anyone have any concerns -- well, I know
20 Bill had the question, or we'll say Board
21 first -- with this proposed rule?
22 MS. CLARKSTON: The only question I
23 have from a rule-making standpoint is we try
24 not to limit so much when it says in sub 1 a
25 pdf document. Can pdf just be removed and

1 say, you know, notice of intent in document on
2 its Web site and not limit it to pdf in case
3 something goes awry?
4 MR. KRAUS: Sure.
5 CHAIRMAN: Actually, I think, just
6 from what the conversation was a while ago,
7 let's just circle those things that we think
8 needs to be carefully considered to be dealt
9 with later in that way. So, not that we're
10 trying to postpone anything, but we -- there's
11 just more information that has to be looked
12 at, so --
13 MR. STALTER: Just a suggestion.
14 You're going to -- this is -- you know, this
15 is one document that, you know, your licensees
16 are going to be looking at. Prompt them to
17 take a look at SB 1 by maybe asking a
18 question or two. Not that you're going to
19 actually answer them or review their answers,
20 but, you know, this is the first time, you
21 know, that they may actually have a cause to
22 go look at SB 1, you know. It may be a trick
23 question, you know. Can you name the section
24 that names the Cassitys and their home
25 addresses and so forth, you know. But it's

1 just something to prompt them to go in and
2 look at the SB 1 before they sign it.
3 MS. DUNN: Good suggestion.
4 CHAIRMAN: Okay. Have you got that
5 down?
6 MR. REINHARD: That's why he's got a
7 law license and we've got a funeral director's
8 license.
9 CHAIRMAN: It's kind of like when
10 you're on the computer and it says do you
11 agree to these terms -- (inaudible.)
12 MR. KRAUS: I certify I have read the
13 entire SB 1 --
14 CHAIRMAN: That's right. Click.
15 MR. KRAUS: -- and agree to --
16 (inaudible.)
17 (Several people talking simultaneously.)
18 MR. STALTER: That's what I do on my
19 CLE stuff; yeah, I attended each of those
20 classes and paid attention.
21 MS. DUNN: And, Bill, when we started
22 this, we thought it was going to be a simple
23 form, but when you've got all the disclosures
24 in there, it ended up being longer than what
25 we anticipated.

1 MR. STALTER: I know. I know.
2 MS. DUNN: And this is purely a draft
3 that Lori put together very quickly.
4 MR. REINHARD: It's very good, Lori.
5 MR. MAHN: She did a great job.
6 CHAIRMAN: Obviously, again, all of
7 the -- we're not going to settle this today
8 from what I'm seeing and feeling.
9 MR. REINHARD: We've been told.
10 CHAIRMAN: So, we at least know what
11 direction to move towards, though. So --
12 MS. DUNN: Uh-huh. And no other
13 opposition.
14 CHAIRMAN: Any other thoughts there?
15 Anything else we need for that?
16 MR. KRAUS: There are dates within the
17 filing of annual reports, also. Well, I
18 guess, not any that you would want to deal
19 with, though. Yeah. I think that's fine. No.
20 CHAIRMAN: Okay. Then those thoughts
21 under advisement and -- Mr. Otto?
22 MR. OTTO: I just -- yeah. I just had
23 one -- when you're doing the form -- and this
24 is great that this got whipped out so quick.
25 But most of the -- I mean, correct me if I'm

1 wrong. Won't most of the sellers be a
2 corporation?
3 CHAIRMAN: Are sellers corporations?
4 MR. KRAUS: Maybe. I don't know.
5 MR. OTTO: I mean, I'm just saying if
6 most of your sellers are the corporation, that
7 should be block one as opposed to you go down
8 to little E at the bottom if you're a
9 corporation. I mean --
10 MS. DUNN: Okay.
11 MR. OTTO: I'm just saying maybe gear
12 the form towards what most people are, which
13 is a corporation, and then it'll be -- if
14 you're not a corporation, fill out this
15 section.
16 MS. DUNN: Right. Okay.
17 MR. OTTO: It works either way, it's
18 just a thought.
19 MS. DUNN: Yeah. I mean, that's why --
20 CHAIRMAN: That's why we're here.
21 MS. DUNN: And this is the time.
22 MR. OTTO: And when it says list
23 providers associated with the applicant, is
24 there anything on here that says see attached?
25 I mean, so -- I mean, we've got, what -- we

1 probably have several hundred of them with
2 Missouri Funeral Trust.
3 MR. KRAUS: Like attach additional
4 pages as needed, or something like that.
5 MR. OTTO: Yeah.
6 MS. DUNN: We have a standard language
7 for that on our establishment renewals.
8 MR. OTTO: Yeah. Whatever is standard
9 language.
10 CHAIRMAN: Okay. I think we're moving
11 on.
12 MR. KRAUS: All right. So, that's the
13 proposed rules that we discussed to implement
14 this. Were there any other comments with
15 regard to that section?
16 CHAIRMAN: Now, we're back to the
17 entire page, whatever it is, 333.315.
18 MR. KRAUS: Right. On page 10.
19 CHAIRMAN: Ten.
20 MS. DUNN: Our document isn't page
21 numbered, so --
22 MR. KRAUS: Oh, it's not?
23 MS. DUNN: Just so you know.
24 MR. KRAUS: Oh, I'm sorry.
25 MS. DUNN: Yeah. That's okay. I

1 don't know how we --
2 (Several people talking simultaneously.)
3 CHAIRMAN: Is there anything else in
4 the comment boxes that was not addressed by
5 the rule, the form, all of that, that we need
6 to look?
7 MR. OTTO: I don't know if you can.
8 Don Otto, again. It's kicked off on the
9 bubble at K23, that -- I mean, I don't know
10 if you need to or if you can, but, for
11 example, if the seller is a corporation and
12 the controlling stockholder is a corporation,
13 the controlled stockholder has to be eligible
14 as if they were an individual? Or what if
15 there is no controlling stockholder? I guess,
16 if there's no controlling stockholder, it
17 doesn't matter, if everybody owns a third.
18 MR. KRAUS: I mean, that's a good
19 question.
20 MR. OTTO: I mean, I think you can
21 interpret that to say that that means if the
22 controlling shareholder of a seller is an
23 individual, but --
24 CHAIRMAN: So, basically, you're
25 saying that it does need to be clarified?

1 MR. OTTO: Well, I think it probably
2 does. I'm not sure how. Because in a -- you
3 know, and too bad we don't have these guys
4 here, but I'm sure a lot of the sellers,
5 including Missouri Funeral Trust, is owned by
6 another corporation. So, 100 percent of the
7 shares of Missouri Funeral Trust are owned by
8 the Missouri Funeral Directors and Embalmers
9 Association. So, how can we -- you know.
10 MR. SPEAKS: So, every single person
11 must, in that group --
12 MR. OTTO: Well, if there was one that
13 was a controlling shareholder, there would be.
14 But -- and, of course, there is no single
15 controlling shareholder in that, so -- I mean,
16 I can see how we can skate, but that one
17 might need to get some legal eagles on that to
18 clarify that because --
19 MR. KRAUS: Yeah. I mean, I agree that
20 there's room for some clarification there. As
21 to what that clarification is, I -- I mean, I
22 think we want some direction from the Board as
23 to what the Board thinks this means instead of
24 the attorney -- or we can make up what we
25 think it means and then bring it back to the

1 Board and see if you agree.
2 MR. REINHARD: Do that.
3 MR. KRAUS: Okay.
4 MR. STALTER: Who made you chairman
5 again?
6 MR. KRAUS: Because, I mean, that
7 could mean a lot of different things, so --
8 CHAIRMAN: I would agree.
9 MR. REINHARD: I've got my license in
10 a ring binder on the table. I don't have it
11 on the walls.
12 CHAIRMAN: Anyone else with comments or
13 directions on 333.315?
14 MR. KRAUS: There are fees referenced
15 on there, but we're going to hit that in a
16 subsequent meeting.
17 CHAIRMAN: So, are we ready to turn
18 the page?
19 MR. KRAUS: All right. So, we're on
20 333.320, which, of course, are a lot of the
21 various similar concerns transitionwise to the
22 provider that we just talked about, and I
23 think the emergency rule covers that, also --
24 or covers those issues, also. I think there
25 was a concern raised about whether we need a

1 rule to determine what proof is required to
2 show the age, which you can either set out
3 specifically in rule or you can look at
4 whatever is submitted and determine if that
5 proves their age or not. Although, I think
6 sometimes it's helpful for staff to know
7 what's acceptable and what's not.
8 CHAIRMAN: Should we do something with
9 that now?
10 MR. McCULLOCH: It's helpful for them
11 to do what, now?
12 MR. KRAUS: For staff to know what's
13 acceptable and what's not acceptable.
14 CHAIRMAN: I mean, I guess the
15 question here is, like, do you need a copy of
16 their birth certificate or does that -- do you
17 want to go that far?
18 MS. DUNN: No. No, we don't do that
19 now, and I don't think --
20 CHAIRMAN: But I said, do you want to?
21 MS. DUNN: I don't think so unless the
22 legal think it was required, but we don't do
23 it now.
24 CHAIRMAN: Does anyone here think that
25 is a sticky point? Do we need to start

1 getting birth certificates or something from
2 people to prove their age?
3 MR. KRAUS: Is copy of driver's license
4 sufficient?
5 CHAIRMAN: Copy of their driver's
6 license?
7 MR. McCULLOCH: Can you do a copy of
8 driver's license?
9 CHAIRMAN: I mean, something.
10 MR. KRAUS: Provide a visa or is an
11 expired visa sufficient?
12 MR. McCULLOCH: What happens when
13 people don't have a driver's license? What
14 other --
15 (Several people talking simultaneously.)
16 CHAIRMAN: Hey, Lori? Is there a copy
17 of driver's license on applications now?
18 (Several people talking simultaneously.)
19 MR. KRAUS: Yeah, some will get --
20 CHAIRMAN: Just with a picture?
21 MS. DUNN: But we don't require it.
22 CHAIRMAN: Okay.
23 MR. KRAUS: If they have a valid work
24 visa or something like that. I don't know
25 that this Board runs into all of that all that

1 much, but other Boards do.
2 MR. McCULLOCH: So, we need to spell
3 out what those types would be then; is that
4 what you're saying?
5 MR. KRAUS: No. I'm saying that was
6 suggested that's something the Board may want
7 to do. If no one is excited about it, we can
8 --
9 MS. DUNN: But we don't do it
10 currently.
11 MR. McCULLOCH: We don't ask for
12 anything? If they say they are, they are, and
13 you go on?
14 MR. REINHARD: I think we ought to
15 fingerprint them.
16 MS. DUNN: Yes. Because if they lie,
17 then we can go back and discipline their
18 license.
19 MR. McCULLOCH: Okay. So, don't worry
20 about it.
21 MR. KRAUS: All right.
22 CHAIRMAN: Okay. Don't worry about it?
23 MR. REINHARD: I'd fingerprint them.
24 MS. DUNN: We haven't talked about
25 that yet.

1 CHAIRMAN: That's coming.
2 MR. KRAUS: It's coming. All right.
3 Down in sub 7 there, I guess it's sub 2, sub
4 7, K34, it refers to a certifies to the Board.
5 Will the Board want people to just certify in
6 their own language or do you want to provide
7 draft language or actually provide a form to
8 you to be used, or just leave it as it is and
9 take whatever they provide and see if it
10 complies?
11 MR. REINHARD: Don't you think you
12 ought to give them a form?
13 CHAIRMAN: You're being serious; right?
14 MR. REINHARD: Seriously.
15 CHAIRMAN: Yeah. Well, I would think
16 something.
17 MR. REINHARD: Because I don't think
18 -- it would be easier for them to have some
19 kind of form to fill out.
20 MR. KRAUS: I could see having
21 language, and whether you put that in a form
22 or not or just make that language -- this is
23 acceptable language.
24 MR. REINHARD: We've got to do
25 something for them.

1 CHAIRMAN: But how are you going to
2 certify it if you don't invite something back
3 that says this is what I'm doing? Go ahead.
4 MR. OTTO: Well, you -- Don Otto
5 again. You might need a rule, if you're going
6 to do a rule on this, to clarify what if the
7 seller is selling both insurance funded and
8 joint-account funded, but that's all.
9 CHAIRMAN: Check this box, check this
10 box, check this box.
11 MR. OTTO: Yeah. But the way this is
12 -- yeah. But I'm just saying a rule might
13 need to clarify that because it says you don't
14 have to do a trust if you certify you're only
15 selling insurance-funded or joint-account
16 funded preneed contracts. So, somebody could
17 interpret that to say that if you're selling
18 both insurance and joint accounts, you have to
19 establish a trust.
20 MR. KRAUS: Because you're not doing
21 one or the other; you're doing both.
22 MR. OTTO: Yeah. Not doing one or the
23 other. But, I mean, there's court cases out
24 there that says or means and, and and means
25 or, so I think it's perfectly legit in a rule

1 to say that's what we mean. If you're not
2 selling a trust, you don't have to have a
3 trust.
4 CHAIRMAN: Right. Right.
5 MR. REINHARD: That's -- and a form
6 and check one or the other, or both.
7 MS. DUNN: Right.
8 CHAIRMAN: All of the above.
9 MS. DUNN: So, clarify and then have
10 some type of draft language on the form for
11 certification.
12 MR. REINHARD: I just think it works
13 out better.
14 MR. OTTO: I just don't want to have
15 somebody having to establish a trust who is
16 not selling trusts like we've got right now.
17 MR. REINHARD: I'm selling gift cards.
18 CHAIRMAN: Did you all hear what Jim
19 said? I mean, he -- the form. Just say yes.
20 MS. DUNN: A certification.
21 MR. KRAUS: Certification language on
22 the form and check boxes.
23 MS. DUNN: And a check box so that
24 it's clear what you're doing as a seller;
25 correct, Don?

1 MR. OTTO: Yes.
2 MS. DUNN: Okay.
3 MR. REINHARD: And you're good to go.
4 I was taking care of you.
5 MS. DUNN: So, we're good on that page.
6 CHAIRMAN: That's unanimous.
7 MR. KRAUS: All right. Let's see.
8 K36, I think there was a question -- or there
9 was a comment or question brought up whether
10 it could be every other year -- every two
11 years as opposed to each year, where it says
12 each year or a date established by the
13 Division. I need to know if that's something
14 the Board wants to consider or not, but that
15 was brought up.
16 MS. DUNN: What we need to do is make
17 sure that we have adequate funds every year to
18 pay our bills and, right now, we have
19 establishments, and the next year we have
20 funeral directors and embalmers, and we've had
21 providers and sellers every year even though
22 that amount of money is not an excessive
23 amount right now. So, if everyone would just
24 allow us to review our financials which Shari
25 and Connie are working on, just so that we

1 have an appropriate budget every year. So,
2 what we're trying to do is alternate
3 everything so that we have enough money within
4 that year to pay our bills, and enough
5 staffing to process everything.
6 CHAIRMAN: And, currently, it works
7 well as it is?
8 MS. DUNN: Yes. And the Division does
9 set the renewal dates. That's in their
10 statute -- or statute? Yeah.
11 MS. CLARKSTON: Yeah. It's by rule.
12 MS. DUNN: Okay.
13 CHAIRMAN: So, I guess we need to look
14 at the money, but, ultimately, this could just
15 be left alone; correct?
16 MS. DUNN: Yes. But I think we'll
17 address that in the future when we look at our
18 financials and --
19 MR. KRAUS: You mean, because you will
20 want it to be every other year?
21 MS. DUNN: Well, I'm just trying to --
22 MR. KRAUS: The reason I ask that is
23 because if you do, then I think we do need to
24 do a rule on this.
25 MS. DUNN: Right. Exactly.

1 MR. KRAUS: Okay.
2 MS. DUNN: And so, what I'm trying to
3 think of right now is the financial impact or
4 projections that we have right now. We have
5 funeral directors and embalmers one year, we
6 have establishments the next year, and
7 possibly we could do providers and sellers
8 every other year when we do establishments. I
9 don't know.
10 MR. KRAUS: So, you want to touch back
11 on this --
12 MS. DUNN: Yes.
13 MR. KRAUS: -- once we talk about fees
14 and budgets?
15 MS. DUNN: Projections and fees. Yes.
16 MR. KRAUS: Okay.
17 CHAIRMAN: Okay.
18 MS. DUNN: That would be a lot easier
19 process. I just want to make sure the money
20 comes out okay.
21 MR. KRAUS: All right.
22 CHAIRMAN: So, that pretty much covers
23 all of those bubbles at the top. Does anybody
24 else have any comments? Let's see -- didn't
25 look. Okay.

1 MR. KRAUS: All right. Some of the
2 additional comments there at the end in K39,
3 someone mentioned subcategories of sellers at
4 one point. I guess this would be the time to
5 talk about that some more if anyone is
6 interested in that. What I'm referring to
7 there is subcategories of licensure where your
8 license would be seller, joint accounts only;
9 seller, trusts only; and actually have
10 different levels of licensure. That's just
11 the idea that was thrown out. I see John
12 shaking his -- or Don shaking his head, but --
13 CHAIRMAN: Is there -- even though the
14 idea was thrown out, is there some issue that
15 -- I don't even know -- I kind of remember
16 that thought, but is there some issue that we
17 really should look at this? Somebody sees
18 there's an avenue here where this really makes
19 a big difference in some way? To start, my
20 knee-jerk here is to start dissecting
21 licenses, but all we've got ahead of us and
22 all the rest of it, that's like --
23 MR. McCULLOCH: I can't imagine. I
24 can't imagine doing that.
25 MR. REINHARD: What do you think, Bill?

1 MR. STALTER: You know, there's a
2 thing about as you get down the road and talk
3 about reviews and exams, as you look -- you
4 know, somebody only doing joint-account
5 contracts or something like that, you'll go in
6 and just looking for that. I mean, how do
7 you approach down the road? And if they're
8 only doing insurance, then, you know, you
9 would have a different format for doing those
10 exams. So, basically, I'm just thinking, you
11 know, in terms of, you know, how you go in to
12 make it more expedient. You don't want to go
13 in with a full audit program if they're just
14 doing one thing or the other because, you
15 know, that cost is going to be pretty
16 expensive. I mean, we've got to start
17 thinking ahead, you know, how to categorize
18 these guys and how you approach them down the
19 road. And in one sense, I kind of like that.
20 I mean --
21 CHAIRMAN: Okay.
22 MR. REINHARD: Only is this something
23 that we would have to -- this wouldn't be in
24 the formal emergency rule with this; right?
25 MR. STALTER: No. No. It would --

1 MR. REINHARD: So, I mean, this is
2 something we can actually think through a
3 little deeper down the road.
4 CHAIRMAN: Okay. Makes sense to me.
5 MR. REINHARD: Because we're talking
6 about the audit process of -- like, you could
7 have Lori go in, pull so-and-so many files,
8 match them up against CDs or whatever, so on
9 and so forth. I mean, you don't have to have
10 somebody -- an accountant go in there,
11 particularly -- unless we find something, and
12 then you have an accountant go in; correct?
13 MR. KRAUS: To do what, again?
14 MR. REINHARD: I mean, if you're doing
15 the audits.
16 MR. McCULLOCH: In other words, you're
17 not going to go out and just, all of a
18 sudden, say, hire some accounting firm and say
19 go in there and audit, like if they're in
20 services or some funeral home, you're going to
21 start off by going in and trying to find out,
22 probably, this is the way it should be done,
23 looking through their files and making sure
24 that everything is in order, the contracts are
25 signed, that sort of stuff. If they do find

1 problems, then you go to the next level, the
2 next level, and, ultimately, if there's
3 problems, you just -- you're doing a
4 full-blown.
5 MR. REINHARD: Yeah. I mean, I don't
6 think you need to start -- I agree with you.
7 I don't think there's any reason to have the
8 expense of somebody -- it would be, like,
9 okay, Don, a lawyer goes to the facility, you
10 have a format of, okay, you pull 15 contracts
11 over the last so many years, you know, back to
12 2000 -- or 1982 or '3, whenever it started,
13 look them over, see if they've got them right,
14 match them up against the funds at the bank.
15 I mean, you know, I've got joint accounts.
16 You can take my contracts, go to the bank,
17 pull -- you know, pull the CD. Here it is.
18 CHAIRMAN: But somehow that thought
19 gets broken into how your licensed as a seller?
20 MR. REINHARD: Oh, I think that jumps
21 ahead a little bit.
22 CHAIRMAN: No. You're on track, but
23 what he's saying is that somehow we categorize
24 our license to fit at least one angle of what
25 you just said.

1 MR. REINHARD: Okay.
2 MR. McCULLOCH: But wouldn't you do
3 that when you look at the form, though?
4 MR. STALTER: Yeah. I think that's
5 exactly it. It's on the application when you
6 -- for the license --
7 MR. McCULLOCH: Yeah. It's on the
8 application.
9 MR. STALTER: -- is to check the
10 boxes. It's kind of like what Don said
11 earlier, you know, is that they're going to
12 certify you, and if they want to check
13 insurance and joint account, your form will
14 say -- will include the certification that
15 eliminates the trust requirement, so I think
16 that's the first document to start with.
17 MR. REINHARD: Well, I think that
18 jumps a little --
19 MR. McCULLOCH: So, before you go out,
20 someone has got to look at the form and say
21 this gentleman here is strictly joint account,
22 so we know that that's what we're going for.
23 We're looking for joint accounts, we're not
24 looking for -- we're not going to go in and
25 say, now, where is your trust --

1 MR. REINHARD: Right.
2 MR. McCULLOCH: -- and why don't you
3 tell us, and kind of hold --
4 MR. KRAUS: But does that mean that
5 that person who does only joint accounts is
6 not licensed to do anything else, or they just
7 happen to not do anything else?
8 CHAIRMAN: Yeah.
9 MR. McCULLOCH: Well, I thought your
10 license, you can do whatever.
11 CHAIRMAN: You're subcategorizing the
12 seller license.
13 MR. REINHARD: Oh.
14 CHAIRMAN: Instead of one seller
15 license hanging up here, now do you have to
16 have both? Do you have to have a seller and
17 then --
18 MR. STALTER: No. No. No. We're not
19 talking about multiple licenses. I think
20 we're just talking about how you license these
21 people, that you get the right information to
22 start with. I don't even see this as an
23 emergency rule --
24 MR. REINHARD: No.
25 MR. STALTER: -- I just see this as

1 just thinking ahead.
2 CHAIRMAN: Oh, okay.
3 MR. STALTER: How to identify what
4 they're selling.
5 CHAIRMAN: So, we're almost back to the
6 certification.
7 MR. EGGEN: So, it's still one license
8 as a seller, but when I go in there, we would
9 know from the application process that we're
10 only looking for joint accounts in this
11 establishment.
12 MS. CLARKSTON: Maybe not looking for,
13 that's all you should find.
14 MR. REINHARD: Yeah. There you go.
15 Yeah. We're coming around to the thing.
16 (Several people talking simultaneously.)
17 MR. KRAUS: All right. But, of course
18 -- but the comment towards this section was
19 going towards whether there should be
20 consideration of different licenses.
21 MR. STALTER: Yeah, that -- you know.
22 MR. KRAUS: Which is whole another
23 thing.
24 MR. STALTER: Yeah.
25 MS. DUNN: Yeah, I don't --

1 CHAIRMAN: I don't see that one.
2 MR. STALTER: Yeah.
3 MS. DUNN: I mean, we don't even have
4 that for funeral establishments.
5 MR. KRAUS: No, I'm not for it. I
6 just feel that I should bring them up because
7 they were brought to me, so --
8 CHAIRMAN: Okay. Lori has a question.
9 MS. HAYES: I'm going where Connie was
10 going, and what if you classify -- okay. My
11 -- I'm a seller, I'm only doing joint accounts
12 that I'm telling you. I have my trust at the
13 bank that you know nothing about, so you come
14 in and you're looking at my joint drawer that
15 says, hey, all these contracts are joint
16 accounts. Nobody is ever going to know that I
17 have a trust account. Nobody is ever going to
18 look at those contracts to know if my trust is
19 where it should be.
20 CHAIRMAN: Okay.
21 MR. REINHARD: Complying. Right.
22 MR. McCULLOCH: But you wouldn't know
23 that anyway if they -- if that's the route
24 they're going to take because they could --
25 again, they could hide all that, you know, or,

1 you know, I could talk about -- (inaudible) --
2 all the time, you know. Those never get into
3 a file anywhere, it's just that --
4 (inaudible.) Those, you're never going to
5 find anyway.
6 MR. EGGEN: Exactly. There's no
7 paper trail.
8 MR. McCULLOCH: Yeah.
9 CHAIRMAN: Isn't that kind of that
10 certification, though, that we're talking
11 about that you're going to actually say I'm
12 doing this, I'm doing this, I'm doing this,
13 I'm doing all of these, and then you're
14 certifying to the Board in writing that that
15 is what I'm doing, but my mind just caught --
16 remembered something. I think I'm right.
17 Under the joint accounts, under the trust,
18 even under the insurance, the reporting of
19 that at the end of the year and the annual, I
20 mean, it's going -- it's supposed to show
21 everything that you did; right?
22 MR. STALTER: Yeah. But you might be
23 talking about three different annual reports.
24 CHAIRMAN: Okay. So, the annual
25 report then almost needs to tie with the

1 certification where you could cross-reference
2 those.
3 MR. McCULLOCH: Well, like Lori said,
4 if someone was out to try to hide that,
5 they're just never going to send in any annual
6 reporting on it, either, so you're never going
7 to know that. The way it will come up is
8 when they can't afford that funeral when that
9 person comes in there and then you get in the
10 middle of it.
11 CHAIRMAN: Right. And then you go
12 look at all of it and see if --
13 MR. EGGEN: They're not going to fund
14 it to begin with.
15 MR. McCULLOCH: They aren't going to
16 fund it, but if they can't take care -- like
17 Ms. Fincher, if she can't take care of the
18 funeral -- (inaudible) -- will collapse on her.
19 MR. OTTO: Right.
20 MR. McCULLOCH: People will say, hey,
21 she won't provide, she can't do a casket, you
22 know.
23 MR. EGGEN: Right.
24 MS. CLARKSTON: I think something else
25 that should assist with that is the sequential

1 numbering of the contracts that's required
2 further back in the -- I think it's like 460.
3 Not that that's going to be the catchall
4 because you could run two different sequential
5 contracts for joint -- I should -- (inaudible.)
6 MR. McCULLOCH: Well, I'll use Jane
7 again. What she did to all of us -- I say
8 all of us -- to us, because I don't know what
9 happened with the other guys, but to us, we do
10 number all of our contracts, have for a long
11 time. But what she did is she took her
12 applications and she just made a photocopy of
13 them, and it was that same contract 0001, you
14 know. And so, everybody that came in, I don't
15 know what she did, but if someone questioned
16 it, I'm sure she said, yeah, you know, I ran
17 out. I just made a copy. This is fine.
18 They trusted her. So, that really doesn't
19 help us.
20 MS. CLARKSTON: And I -- as I said
21 that, you're right, because somebody could
22 just --
23 MR. OTTO: They just make copies.
24 MS. CLARKSTON: -- make copies or run
25 two different sequential numbers for whatever

1 kind of funding they're using.
2 MR. McCULLOCH: Exactly.
3 CHAIRMAN: Well, they would almost
4 have to. They've either got -- they would
5 either have to run different sets of -- if
6 you're using preprinted forms, you almost have
7 to do that or you're going to have to have a
8 check-mark system built into one form that
9 says this number is this, this number is this,
10 this number is this, which would not, in the
11 reporting process, come up with the numbers
12 being in sequential order. So, you would have
13 to have different runs of numbers.
14 MR. McCULLOCH: Yeah. Because you have
15 multiple people out selling --
16 CHAIRMAN: I'm going to do it all.
17 Personally, I'm going to do it all. I'll have
18 insurance, I'll have trusts, I'll have joint
19 accounts, I'll have it all, so --
20 MR. REINHARD: Well, good for you.
21 (Several people talking simultaneously.)
22 CHAIRMAN: Well, but I will. I'm
23 thinking personally. I will have to run a
24 different set of numbers.
25 MR. REINHARD: I'll send my insurance

1 contracts to you then because I'm not doing
2 insurance. Oh, I'm sorry, Todd. I'll give
3 him one and you one.
4 (Several people talking simultaneously.)
5 MR. REINHARD: But what about -- okay.
6 Let me ask this question: If you're going to
7 go back and do --
8 (Several people talking simultaneously.)
9 MR. STALTER: Okay. Hang on. Hang on.
10 MR. REINHARD: If we're doing audits
11 five -- not five years back. Like, if you're
12 doing audits and you go back, I mean, don't
13 you think we ought to have a record these guys
14 were in a trust to begin with, and in 2009,
15 they went -- in August, they went to joint
16 accounts or vice versa, they went from joint
17 accounts to -- I mean, so you know what
18 they've done in the past so when you went back
19 and audited them, what you could pick up from
20 the records, I guess, that they send in that
21 they had trusts and where it was, or joint
22 accounts and where they are. Do you see what
23 --
24 CHAIRMAN: The current record or
25 seller report actually already says that. I

1 did this many trusts, this many, you know,
2 this, this many this, so --
3 MR. REINHARD: In the past.
4 CHAIRMAN: In the past.
5 MR. REINHARD: So, are you looking for
6 today? I mean, like, what are you doing now,
7 or what have I done before, or what am I
8 going to do?
9 CHAIRMAN: Good question. Where do
10 those numbers start? Do you start with #1?
11 MS. CLARKSTON: I'm just sitting here
12 thinking. When you get to that, that's really
13 going to require some more clarification.
14 CHAIRMAN: Yeah. I know.
15 MS. CLARKSTON: For your scenario and
16 then just what John had indicated with agents,
17 because the agent gets contracts one through
18 ten in their packet and then go on. I mean --
19 MR. REINHARD: Well, you're talking
20 about two different things. What I'm talking
21 about, like, you know, how you clarify that on
22 a form if you just have a form sent to them,
23 like, when did I start the trust, you know, is
24 it still current, you know, when did you start
25 joint accounts, are, you know, you starting

1 from August the 29th or 28th on. There's, you
2 know --
3 CHAIRMAN: The gift that keeps on
4 giving.
5 MR. REINHARD: Well, you've got -- I
6 mean, these -- you know, somebody that's going
7 to do the inspections or -- not audits, but
8 whatever you're going to do, is going to have
9 to know something when they walk in and say,
10 okay, Mr. Reinhard, we have a record that you
11 had a trust between 1982 to 2009, and we want
12 to pull some of those contracts out and -- you
13 know. Or like you say, we're going to be all
14 three. Well, okay, I've got -- you do some
15 joint accounts; let's pull a sampling of
16 those. Let's see your, you know, insurance.
17 CHAIRMAN: You had something to
18 respond to that.
19 MR. STALTER: No. I mean, I do, but
20 I'll make a submission. We're kind of
21 battling with this in Kansas, too, with
22 cemeteries. I mean, how can you, you know, do
23 an efficient inspection? I mean --
24 (inaudible) -- because they don't get paid
25 enough to do it. But, basically, how do you

1 cover all these bases the quickest way, and
2 then turn it over to somebody like him to know
3 what he's looking for?
4 (Several people talking simultaneously.)
5 MR. STALTER: Okay. I'm just trying
6 to make a point.
7 MR. McCULLOCH: No. That's a good
8 point. (Inaudible.)
9 MR. STALTER: And we're talking -- and
10 part of it is on the cemetery side, too, is
11 that these contracts -- I mean, that -- we
12 were trying to get rules about what a contract
13 should even look like. In other words, when
14 you send it in -- and, you know, if you guys
15 decide you're going to do cemeteries, what is
16 -- you know, what -- we know what a preneed
17 funeral contract looks like. You know, what's
18 this thing over here?
19 MR. REINHARD: Yeah. The card.
20 CHAIRMAN: Any other comment?
21 MR. REINHARD: Lunch.
22 CHAIRMAN: I think it's time to go to
23 lunch.
24 MS. DUNN: Well, we don't have lunch
25 here, but go ahead.

1 CHAIRMAN: Okay. I thought we were
2 ready, so --
3 MR. KRAUS: Well, let's see. Well,
4 there's a couple of other things in K39 that
5 you can talk about or not. Let me see. I
6 was looking at one awhile ago. Would you want
7 to provide explicitly in rule that a new
8 license is required if there's a change in
9 ownership? I mean, I think you can imply that
10 from the statutes, but if you want to
11 explicitly set that out in rule, that could be
12 helpful.
13 MS. EULER: To mirror the way it is for
14 funeral establishments.
15 MR. KRAUS: But if a seller sells their
16 business, the license doesn't go with it.
17 They've got to come in and get a new license.
18 MS. EULER: They can't sell the
19 license.
20 MR. OTTO: Well, that depends.
21 MS. EULER: Right.
22 MR. OTTO: If you want to mirror
23 funeral establishments, it's pretty easy
24 because that's set out in funeral
25 establishments. But if it's a sole -- if

1 eliminating one owner does not create a new
2 license, adding a new owner does, but the sale
3 of stock does not. So --
4 MR. KRAUS: Yeah. And setting that
5 out.
6 MR. OTTO: The funeral-establishment
7 language is pretty easy.
8 CHAIRMAN: Do we need that?
9 MS. DUNN: Go ahead. Uh-huh. Yes,
10 you do.
11 CHAIRMAN: Okay. All right. Becky
12 says we need that, so just prepare something.
13 MR. KRAUS: All right.
14 MS. DUNN: There doesn't appear to be
15 opposition.
16 MR. KRAUS: Set out that the seller is
17 the one responsible for the money. That was
18 suggested.
19 MS. EULER: So that if the agent
20 doesn't get the money to the seller, the
21 seller acknowledges that they are the one on
22 the hook; they're responsible. I mean, that's
23 implied in the new law, but, again, a rule to
24 just say that very straightforward and clearly.
25 MR. KRAUS: And it's implied in

1 agency, too, but --
2 MS. EULER: Right.
3 MR. KRAUS: -- not explicit.
4 MS. EULER: Right.
5 CHAIRMAN: Do you want to set that out
6 more in detail? One more time, Sharon.
7 MS. EULER: To make it very clear in a
8 rule that the seller is ultimately responsible
9 for the money of their agent. So, if the
10 agent collects the money, but never gives it
11 to the seller, the seller is on the hook for
12 it. I mean, that's --
13 MR. McCULLOCH: Well, that's why you
14 guys wanted to license the preneed people, to
15 put them on the hook. We were always on the
16 hook. (Inaudible.)
17 MS. EULER: Right. And it still is.
18 It still is that way because --
19 MR. McCULLOCH: No, you took us off
20 the hook by giving them --
21 MS. EULER: No, we did not. Under
22 agency law --
23 MR. McCULLOCH: That's what you wanted.
24 MS. EULER: No. Under agency law,
25 that's the way it works. And so --

1 MR. REINHARD: (Inaudible.)
2 MS. EULER: -- what this suggest is,
3 is that a rule is clear.
4 MR. McCULLOCH: Then why do you want
5 to make these poor counselors who never did
6 anything have to have a license and fees and
7 all that stuff?
8 MS. EULER: It wasn't me. The
9 legislature did that.
10 MR. McCULLOCH: Well, yeah. But I
11 heard you guys up there going to try to help
12 us on that.
13 MS. EULER: But the law is what it is.
14 MR. KRAUS: Well, the law is the law
15 now, and that's what we're talking about
16 implementing.
17 MS. EULER: Right.
18 MR. KRAUS: And --
19 MR. McCULLOCH: The preneed company
20 was always -- or the seller was always
21 responsible for what they did. You're right.
22 MS. EULER: Right.
23 MR. KRAUS: Yes. I agree.
24 MS. EULER: And that's what we are
25 suggesting be in a rule and that that's said

very clearly and distinctly so there is no question about it.

MR. McCULLOCH: It is -- (inaudible.)

MS. EULER: Then what?

MR. KRAUS: Right. But if someone asked me, well, what section in 333 or 436 says that, well, I would probably have to point to three or four sections and connect them up and explain how they relate instead of just saying, well, rule so-and-so says they are.

MS. EULER: Right.

CHAIRMAN: Don Otto?

MR. OTTO: If you do do a rule like that, keep in mind that although this is not explicit in Senate Bill 1, it sure is pushing people in that direction, is for the consumers to be sending the money straight to the bank, and that's how a lot of ours do it; you know, there's a coupon book or payment book or -- so, the agent -- just be careful how you word the regulation because it may be very well that the consumer is sending the money straight to the trustee.

MS. EULER: And that's fine.

1 MR. OTTO: Yeah. I'm just saying, if
2 you're going to add -- if you're going to try
3 to codify the common law on agent principal
4 stuff, be careful.
5 MS. EULER: We just wanted to make it
6 clear that the seller is responsible for the
7 acts of their agents.
8 MR. OTTO: Yeah. I'm just saying, I
9 can see a wording of that that made it sound
10 like you're also responsible --
11 MS. EULER: No.
12 MR. OTTO: -- if the consumer is
13 putting in the mail a check to the bank, and
14 I don't want that, for sure.
15 MS. EULER: No. No.
16 CHAIRMAN: So noted. Anybody else?
17 MR. REINHARD: Lunch.
18 MS. EULER: (Inaudible.) It's not
19 here yet.
20 MR. REINHARD: Well, maybe these guys
21 will want to go to lunch.
22 MS. EULER: We can break for lunch
23 anyway.
24 CHAIRMAN: Well, let's finish the --
25 if there is more thought from our others. Two

more points in that last bubble and then we can turn the page and stop.

MR. KRAUS: All right. Comments regarding provider. Licensure may apply here, too. Oh, that's just think of what we did before, which we have done. If you fail to renew and two years pass, it becomes void. Have to reinitiate application process.

CHAIRMAN: Now, that's been an issue because when they don't get their renewals in and then we're out how many do you perform --

MR. MAHN: Doesn't that mirror the other licenses?

MS. EULER: Yeah.

MR. MAHN: Doesn't that mirror all the other licenses, though?

MS. EULER: Yeah.

MR. KRAUS: Then they do; right?

MS. EULER: Yeah.

MR. MAHN: Leave it like it is.

MR. KRAUS: And everyone agrees?

MS. EULER: We always want to be consistent.

MR. REINHARD: Second.

CHAIRMAN: Okay.

1 MS. DUNN: So, it's okay.
2 MR. KRAUS: So, we're agreeing that
3 that's clear and we don't need to do a rule?
4 MS. DUNN: No. We want to do a --
5 MS. EULER: We want to do a rule to
6 mirror --
7 MR. KRAUS: We want to do a rule. All
8 right.
9 MS. DUNN: Is that what you were
10 saying, Jim, that we will do a rule?
11 MR. REINHARD: Yes. Yeah.
12 (Inaudible.)
13 MR. KRAUS: Have we hit everything in
14 K39 then?
15 CHAIRMAN: I think so.
16 MR. KRAUS: Did we talk about sellers
17 not licensed at the time of need? Did we
18 talk about that one?
19 CHAIRMAN: Well, I thought we did,
20 because there's the category and we talked
21 about everything else under it, if the seller
22 is not licensed.
23 MR. KRAUS: I think that goes towards
24 the license at the time the contract is
25 entered into, but then at the time of need,

1 they're no longer licensed for whatever
2 reason, and what happens? Was that --
3 MS. EULER: Uh-huh. I think we want
4 to make it clear that if the seller is
5 responsible for the money, and they can't
6 escape their responsibilities by not just --
7 by just turning in their license.
8 MR. KRAUS: By not renewing or
9 surrendering.
10 MR. OTTO: Well, this is on Chapter
11 333. I'm not sure you can do anything. I
12 mean, if they don't have a license, you can't
13 take their license away. But, I mean, under
14 436 -- under Senate Bill 1, 436, I think
15 there's already a provision in there that says
16 --
17 MR. KRAUS: That you're practicing
18 without a license.
19 MS. EULER: Right.
20 MR. OTTO: -- we're coming after you
21 whether -- you know, we're coming after you no
22 matter what.
23 MS. EULER: Right. And my thought on
24 this rule was just to restate and make that
25 very, very clear.

1 MR. OTTO: I think that should be
2 under 436 regulations, not 333, though. That
3 is -- like I say, you can't take somebody's
4 license away that doesn't have a license, so
5 -- and just before you break, one thing -- I
6 think this kind of falls under there, maybe,
7 sort of. But it was really part of this
8 emergency rule that we passed out, just
9 something to throw out. You know, although
10 the annual report is due October 31st, the
11 seller gets to pick what 12-month reporting
12 year they use, so you can use December 1 to
13 January 1 or whatever. You just hand your
14 form in on October 31st. What we're planning
15 to do is to close off our -- to use for your
16 reporting year this time August 28th so that
17 we'll have a year report under the old law,
18 and then our next year will all be under the
19 new law. Now, that's certainly not required
20 that anybody does that, but I would urge that
21 that be a consideration or a suggestion for
22 people because you get to pick what your
23 reporting year is --
24 CHAIRMAN: Right.
25 MR. OTTO: -- and just file it on

1 October 31st or before October 31st. So,
2 we're just going to make our reporting year
3 end August 28, 2009, so that we have one year
4 under the old law, and then our next time we
5 report, it'll be a full 12 months under the
6 new law. It makes life a lot easier and I
7 think --
8 MS. DUNN: I think consistency for
9 everybody would be better.
10 MR. OTTO: Yeah. And if there would
11 be a way to require that, that would be a
12 great thing. I don't know if you can, but
13 we're going to do it as long as you don't
14 have a problem with that, and that's what we
15 thought we would do.
16 CHAIRMAN: I think that makes a lot of
17 sense myself.
18 MS. EULER: I have an update on the NPS
19 situation if you would like that at this time.
20 MR. REINHARD: Oh, they found the
21 money?
22 MS. EULER: No.
23 MR. REINHARD: Oh.
24 MS. EULER: That's not the update I
25 have.

1 MS. DUNN: Are we finished with that
2 page?
3 CHAIRMAN: Are we finished with that?
4 Is everybody okay with this? Okay. So, look
5 into the thought of that. I think that makes
6 a lot of sense, the August 28th and what we
7 can do with that. Okay. Sharon has a report
8 that she would like to give and, I guess, by
9 the smile on her face, we're going to like
10 that report, maybe. I don't know.
11 MS. EULER: Oh, no. I didn't say that.
12 CHAIRMAN: Oh, okay.
13 MS. EULER: This is not the update
14 you're hoping for. This is a little bitty
15 update. I talked with -- I told you I talked
16 with the SDR's counsel this morning about
17 people getting claim packets who don't have
18 NPS contracts. They have looked at a few that
19 have come in and, thus far, every one they've
20 looked at does, indeed, have an NPS policy.
21 Some of them have NPS cemetery policies, but
22 they haven't found anyone yet who sent in a
23 claim form who doesn't have an NPS contract.
24 They haven't looked at a lot. They're not
25 going to look at a lot, but the ones they've

1 looked at, so I just wanted to report that.
2 So, if you're getting calls from people saying
3 I don't have an NPS contract, well, they might.
4 MS. DUNN: But it could be a
5 cemetery-related --
6 MS. EULER: It could be a
7 cemetery-related. And, again, the folks from
8 Texas, Rachel called me back this morning, as
9 well, confirmed that, you know, the law
10 requires that they send out to everybody in
11 their database, and so, that's who they sent
12 out to, so that's it.
13 CHAIRMAN: All right.
14 MR. REINHARD: They still haven't
15 found the money?
16 MS. EULER: I don't know.
17 MR. REINHARD: Okay.
18 MS. EULER: I didn't get that update
19 yet. They haven't told me if they have.
20 MR. MAHN: (Inaudible.)
21 MR. REINHARD: Get a backhoe and start
22 digging.
23 MR. MAHN: (Inaudible.)
24 (Several people talking simultaneously.)
25 CHAIRMAN: Need a motion to go into

closed.

MR. MAHN: Motion.

CHAIRMAN: Second?

MR. McCULLOCH: Second.

CHAIRMAN: John second.

MR. REINHARD: They got along for once.

(Off the record)

CHAIRMAN: Let's go.

MR. KRAUS: Agent registration. First, on the transition initial. A notice of intent will fall within what we've already discussed. And K42, we've already talked about. Of course, we'll need a form. Do we already require notification of any change of info within 30 days of the change? That's in K43.

CHAIRMAN: Mimicking, again, funeral director, embalmers, that thing.

MR. KRAUS: For everybody.

CHAIRMAN: I would assume, yes.

MS. EULER: Yes.

MS. DUNN: So, the standard --

MS. EULER: Just because it's a --

MR. KRAUS: All right. We talked about that.

1 MS. DUNN: B is a big one that we're
2 going to table.
3 MR. KRAUS: Right. We're going to hit
4 that in a subsequent meeting. K45, we already
5 talked about, respect to the seller and
6 provider. I think K46 we already talked
7 about, too.
8 (Several people talking simultaneously.)
9 MR. KRAUS: We talked about potentially
10 coordinating the -- or did we? Did we talk
11 about K47?
12 MS. DUNN: We were talking about when
13 we look at our projections to see how that
14 will work with our money each year.
15 MR. KRAUS: Right.
16 MS. DUNN: And we'll certainly
17 consider that as we talk financials.
18 MR. KRAUS: Okay. So, we're going to
19 hit that later?
20 MS. DUNN: Yes.
21 MR. KRAUS: The first part of K48 set
22 out whether a licensed funeral director must
23 also be a registered preneed agent to sell.
24 CHAIRMAN: That's established already,
25 isn't it?

1 MS. EULER: Yes. In subparagraph 4.
2 MS. DUNN: It's on the next page.
3 MS. EULER: I mean, it doesn't say it
4 exactly, but it certainly implies it.
5 MS. DUNN: Any funeral director acting
6 as a preneed agent shall be required to report
7 the name and address of each preneed seller.
8 MR. KRAUS: Do you think that needs to
9 be explicit in rule or does the statute cover
10 that well enough?
11 MR. MAHN: I think it should read any
12 -- I'm just -- this is just off from the hip,
13 quick. Any funeral establishment acting as a
14 provider shall be required to report the names
15 and addresses of preneed sellers. That's the
16 way I would think it ought to read.
17 MS. EULER: This is agent. This is
18 sales agents.
19 MS. DUNN: Yeah. We're not in that
20 section yet.
21 MS. EULER: We're not on providers.
22 MR. MAHN: I know that. I'm just --
23 MR. McCULLOCH: The establishment is
24 not the agent, though.
25 MR. MAHN: Yeah. But a funeral

1 director acting as a preneed agent --
2 MS. EULER: Yeah. Selling the preneed
3 contracts.
4 MR. MAHN: -- shall be required to
5 report the names and addresses of each preneed
6 seller?
7 MS. EULER: Uh-huh.
8 MS. DUNN: Uh-huh. See, the new law
9 requires --
10 MS. EULER: Funeral directors need to
11 be on the registry as registered sales agents.
12 MR. MAHN: I was reading about the --
13 I got you. Okay. Got you. They may not
14 actually work for a funeral home, they might
15 work for a preneed company.
16 CHAIRMAN: So, is that saying, in
17 other words, every seller shall --
18 MS. EULER: Right. Or if you're
19 selling for yourself --
20 CHAIRMAN: -- show who -- is
21 registered as agents; right?
22 MS. DUNN: Uh-huh.
23 MR. REINHARD: Like in my case, since
24 I own a funeral home, I just fill out the
25 form and send it in -- (inaudible.)

1 MS. EULER: Yes. Yeah. Right.
2 CHAIRMAN: So, then are we just
3 turning it around and then turning it around
4 and saying every agent has to tell who they're
5 selling for?
6 MS. DUNN: Any funeral director acting
7 as a preneed agent shall be required to report
8 the name and address of each preneed seller
9 for which he is authorized to sell.
10 CHAIRMAN: Okay.
11 MR. McCULLOCH: I think what they're
12 trying to do, they're trying --
13 CHAIRMAN: Cross-reference? Is this a
14 cross-reference?
15 MR. McCULLOCH: (Inaudible) --
16 cross-reference and find out who did what and
17 who and --
18 CHAIRMAN: Does that make --
19 MS. EULER: Right.
20 MS. DUNN: See, the agent has to tell
21 what seller he's working for. Well, in this,
22 a funeral director, acting as a preneed agent,
23 would have to say what seller he is working
24 for.
25 MS. EULER: Right.

1 MS. DUNN: Same as an agent.
2 MS. EULER: Right.
3 CHAIRMAN: So, that's just a
4 cross-reference, going backwards?
5 MS. EULER: Right. Right.
6 MS. DUNN: But there is nothing set
7 out on how to do that, so that's why it was
8 suggested a rule would explain how a funeral
9 director can be an agent.
10 MS. EULER: How funeral directors are
11 deemed to be agents.
12 MS. DUNN: Yes. Are deemed to be
13 agents. It says it in here, but that's --
14 MR. MAHN: Shouldn't funeral directors
15 be exempt to be agents?
16 MS. EULER: No.
17 MS. DUNN: Well, the law says not, so
18 you would have to get the law changed.
19 MR. MAHN: I'm just throwing it out.
20 MS. DUNN: Yeah.
21 CHAIRMAN: It should be.
22 MR. REINHARD: But some of them need
23 to take the test, too, Todd.
24 MR. MAHN: Right.
25 (Several people talking simultaneously.)

1 CHAIRMAN: Okay. So, yes?
2 MS. EULER: Do you want to be the name
3 behind saying that --
4 MR. McCULLOCH: Okay. Yes on what,
5 now?
6 MS. EULER: -- every licensee needs to
7 retake the Missouri Law to maintain their
8 licenses?
9 MR. REINHARD: I'm just quoting --
10 (inaudible.)
11 CHAIRMAN: Then we forget all this.
12 No.
13 MR. McCULLOCH: So, what's the
14 question, again?
15 CHAIRMAN: That the funeral -- the
16 funeral director, as an agent, has to record
17 -- report who he sells for; is that what the
18 -- did I say that correctly?
19 MS. EULER: Yeah.
20 MR. McCULLOCH: But that's part of the
21 law; right?
22 MS. EULER: Yeah.
23 CHAIRMAN: Yeah. It's just making it
24 more clear, I guess.
25 MS. EULER: That the funeral director

1 needs to check the box that he wants -- that
2 he's going to sell preneed.
3 MR. KRAUS: And indicate who he's
4 selling it on behalf of.
5 MR. McCULLOCH: And that's just going
6 to be on the application, just another spot
7 that says, hey, I am going to sell preneed?
8 MS. EULER: Yes. Yes.
9 MR. McCULLOCH: And it happens to be
10 for myself?
11 MS. EULER: Yeah. And you list who
12 your seller is, and if that's yourself, then
13 you list that.
14 MR. McCULLOCH: That's yourself, yeah.
15 MR. KRAUS: If you're your only
16 seller, then you just list you.
17 MR. REINHARD: Or anybody in the
18 funeral home that's got -- is the funeral
19 director would be listed.
20 MR. McCULLOCH: Yeah. Somebody that's
21 working for you and you're the seller --
22 MS. EULER: Yeah.
23 MR. McCULLOCH: -- then, obviously,
24 they'll mark it.
25 MS. EULER: Yeah.

1 MR. REINHARD: On their licenses.
2 MR. McCULLOCH: Yeah.
3 MS. EULER: Right.
4 CHAIRMAN: That's all yeses, I take
5 it, so yeah.
6 MR. REINHARD: I don't think you've
7 got enough help to do all this.
8 MS. EULER: It'll be okay, Jim.
9 MR. REINHARD: No, it won't. Look at
10 her, she's already faint or something. She's
11 still looking for a mint.
12 MS. DUNN: No. It gives me a headache,
13 there's so many cross-references.
14 MR. KRAUS: Let's se. Form --
15 CHAIRMAN: Just that we need a form.
16 MR. KRAUS: A new application process,
17 we covered that. Fees, we're going to hit
18 later, K50, K51, first name licensed providers.
19 MR. McCULLOCH: So, the next one is
20 the same thing. After two years, you're out.
21 You've got to go back and take the test and
22 start all over?
23 MS. EULER: Yeah.
24 MR. McCULLOCH: If not, you just catch
25 up with back fees and whatever penalty you

1 might enforce?
2 MS. EULER: Yeah.
3 CHAIRMAN: Well, I guess that only
4 makes sense. But how could they be a provider
5 unless they're licensed?
6 MR. KRAUS: Well, I mean, someone
7 could be providing and not be licensed, I
8 guess.
9 MS. EULER: Right. So, you can't name
10 a funeral home as the provider who is not a
11 licensed -- or you can't name Cosco as the
12 provider unless they're licensed as a provider.
13 CHAIRMAN: So, we need to set that out.
14 MR. KRAUS: It seems kind of basic,
15 but --
16 MS. EULER: It's an option, yeah.
17 MR. KRAUS: Could set that out if you
18 wanted to. Or if you don't think it's a big
19 deal --
20 MR. McCULLOCH: Now, then they do it,
21 we have to have somebody on this end that
22 checks it to see if they don't match up. I
23 mean, that's going to take quite a lot of work.
24 MS. EULER: Well, as part of the
25 investigation audit, that's one of the things

1 that will be checked.
2 MR. McCULLOCH: But, I mean, as it
3 comes in here, is somebody going to check
4 them? No? You'll just wait until --
5 MS. EULER: Because we don't get the
6 preneed contracts.
7 MR. KRAUS: You mean, as cases come to
8 the Board's attention for other purposes --
9 MS. EULER: Right.
10 MR. KRAUS: -- then they'll pull those
11 files and that information will be in the file
12 to cross-reference then.
13 MS. EULER: Right.
14 MR. McCULLOCH: Got you.
15 MS. EULER: Right.
16 MS. DUNN: And what we're going to
17 attempt to do, which this hasn't -- these
18 meetings haven't occurred yet, there is a
19 licensure system utilized by the entire
20 Division. And so, we're hoping to develop
21 licensure relationships for those licenses
22 that corresponded with each other. Now, right
23 now, we have a licensure relationship, like
24 Dunn Funeral Home and 25 funeral directors.
25 So, then when we send out the renewals, we say

1 please verify that the attached listing still
2 work with your funeral home, and sometimes
3 they say, oh, no, they changed, sometimes they
4 didn't. Then we have to change those
5 relationships in our licensure system. So,
6 we're hoping eventually -- you know, through
7 this process, we're going to develop these
8 relationships in our licensure system, so if
9 you're an agent and you're an agent for a
10 seller and you're -- you know, you're a
11 provider in an establishment, all those
12 cross-checks.
13 MR. McCULLOCH: I'll bring this up.
14 Are you going to require that they send in the
15 original and, if they don't, then it gets
16 kicked out. If they cash their check and do
17 all that; do you know what I'm talking about?
18 You don't remember?
19 MS. DUNN: What, the original?
20 MR. McCULLOCH: Okay. So, you've all
21 got these people handle the license and stuff,
22 and so, the money doesn't actually come into
23 your office, it goes to another department;
24 okay? So, we send in our licenses on all of
25 our funeral homes, and it has to be originals.

1 So, we make a copy for our file. So, we
2 accidentally -- the person -- the secretary in
3 the office accidentally puts a copy in instead
4 of the original. And so, we get written up,
5 it goes through this whole process that long,
6 wastes everybody's time and effort. You all
7 did that to us.
8 MS. DUNN: Since I've been here?
9 MR. McCULLOCH: You cashed our check.
10 Oh, yeah. You were involved. It was on
11 Maupin -- the Auxvasse location. Anyway, we
12 sent them all in at one time, so you figured
13 you got a lot of them. And so, they have to
14 be originals, so that office gets our
15 originals and they notice that Auxvasse is a
16 copy. So, they write us up, but you cashed
17 our check. You didn't notify us, because we
18 could have just ran it over to you.
19 MS. DUNN: Is it a copy of a renewal?
20 MR. McCULLOCH: Yeah.
21 MS. DUNN: A renewal. Okay. When you
22 said license, I was confused.
23 MR. McCULLOCH: They shouldn't have
24 done that. Someone should have just picked up
25 the phone and said, hey, guys, obviously, they

1 made a mistake here. There had to be an
2 original because how do you get a copy if you
3 don't have an original. Just a little common
4 sense would go a long way in some of this.
5 MS. DUNN: Division? I mean --
6 MS. CLARKSTON: Well, part of it's the
7 process internally. When renewals come in,
8 they're processed by the central processing
9 unit, so those individuals aren't aware other
10 than they are giving -- they don't have a
11 personal relationship with you to pick up the
12 phone and call you, obviously, and that's --
13 (inaudible.)
14 MR. McCULLOCH: Well, I was thinking
15 maybe call then.
16 MS. CLARKSTON: Well, there's a
17 criteria that they kick the renewals out and
18 that sounds like some of the criteria. They
19 want an original renewal. If it's not an
20 original renewal, it's rejected. But all
21 money, when it comes into the Division, by
22 policy, and I even think rules and regulations
23 with the treasurer's office, has to be
24 deposited. So, there is some of that that's
25 happened and, you know, it is unfortunate.

1 I'm not sure. I wasn't involved in the
2 situation with it or how all that came to be,
3 but that's part of it, internally, what
4 happens. It gets here, then it goes here, and
5 it's kind of a long, drawn-out process
6 internally. Now, do I think that we could
7 probably figure out a way to work that out?
8 Possibly, yeah, but I'm not with this Board,
9 either.
10 MR. McCULLOCH: Well, it's easy for me
11 to say, but it just seems like if you have
12 this stack where this company sends all this
13 in and there happens to be a copy and they
14 know it's supposed to be an original, then
15 common sense would tell you, well, there's got
16 to be an original somewhere. But what they
17 did is they ran it through your all's process,
18 which causes everybody a lot of extra work,
19 paperwork. To us, it's just frustrating, you
20 know, because now we've got to respond to it,
21 the attorney general gets it, we've got to
22 respond to them, and all those people down the
23 line. Nothing is going to happen, you know.
24 But, still, you just -- it just takes time and
25 effort.

1 MS. CLARKSTON: That part of it is
2 outside the Division. That's a Board issue.
3 MR. McCULLOCH: Yeah.
4 MS. CLARKSTON: I mean, but depositing
5 and processing, that comes into the Division.
6 MR. McCULLOCH: Well, our fault was
7 is, yeah, you're lighting us up because you
8 think we've done something wrong, but, yet,
9 you cashed our check; you know what I mean?
10 MS. CLARKSTON: Yeah.
11 MR. McCULLOCH: And I understand why
12 they did it.
13 MS. CLARKSTON: It's just looking at it
14 differently where we're at. I mean, I think
15 we're kind of going to the same direction, but
16 it's process.
17 MS. DUNN: We'll do our best.
18 CHAIRMAN: I'm curious just in the
19 copy that was not accepted was a copy of the
20 renewal application? Is that what was --
21 MR. McCULLOCH: Yeah. You know the
22 stuff when you renew your license for your
23 funeral home every two years?
24 CHAIRMAN: That you fill out. The
25 papers that you fill out.

1 MR. McCULLOCH: Yeah. Okay. We made
2 a copy for our file.
3 CHAIRMAN: Uh-huh.
4 MR. McCULLOCH: But when the lady was
5 doing all of these -- it's not just like one.
6 I mean, there are several funeral homes there
7 -- she accidentally puts the copy in instead
8 of the original. When it hits that office,
9 they're going through those, and then we get
10 written up on the thing.
11 CHAIRMAN: Okay. I just didn't
12 realize that would get thrown out if it wasn't
13 original. I had never heard that thought, but
14 that's okay. I was curious if that's what it
15 was.
16 MR. McCULLOCH: Did you say why would
17 it get thrown out?
18 CHAIRMAN: No. No. I just said I
19 never heard that thought that that would --
20 that is something the Division would not
21 accept.
22 MS. DUNN: And I don't remember the
23 circumstances.
24 CHAIRMAN: I just never heard that.
25 That's why -- I wasn't sure what it was that --

1 MS. CLARKSTON: It's not the Division
2 that wouldn't accept it.
3 MS. DUNN: Yeah.
4 CHAIRMAN: Well, whoever.
5 MS. CLARKSTON: Yeah. It was criteria
6 for renewal, so if the criteria came in and
7 said everyone had to submit original and XYZ
8 documentation, if the original XYZ
9 documentation isn't received, the Division
10 staff isn't in a place where they can
11 communicate with licensees, so it's rejected
12 back to the Board. So, at that point --
13 MR. KRAUS: And then each Board
14 decides at that point what they're going to --
15 how they're going to act on it, if at all.
16 MS. CLARKSTON: Exactly.
17 MR. McCULLOCH: Well, that Board took
18 it on to the fullest extent.
19 MR. REINHARD: What year was that?
20 MR. McCULLOCH: I don't know. I'd
21 have to go back and --
22 MS. DUNN: It had to be before 2002.
23 MR. KRAUS: For untimely renewal or
24 what?
25 MS. DUNN: Because I don't ever recall

1 that.
2 MR. KRAUS: Was that for an untimely
3 renewal; was that the action?
4 MR. McCULLOCH: Oh, no. No. It was
5 done timely, it was just that we gave them a
6 copy.
7 MR. KRAUS: No. I mean, when they
8 later took action, was the allegation an
9 untimely renewal because the copy was
10 submitted instead of the original?
11 MR. MAHN: Fraud?
12 MR. McCULLOCH: It probably was, now
13 that you mention it. It probably was. And
14 it's, like, but you got our money, so, you
15 know. I mean, obviously, there's an original
16 out there. It just seemed like someone should
17 have known.
18 CHAIRMAN: Well, we'll --
19 MR. KRAUS: Yeah. See, I don't know
20 if the Board today would have taken the same
21 way.
22 MR. REINHARD: Would somebody write
23 him a damn check and give him his money back?
24 MS. CLARKSTON: No. There's paperwork
25 to that. We can't do that.

1 MR. MAHN: What did you get for that?
2 MS. DUNN: Since 2002, we tried to
3 refine that process.
4 MR. McCULLOCH: What did you say now?
5 CHAIRMAN: Let's go on.
6 MR. MAHN: Did you serve time?
7 MR. OTTO: It'll show up on the audit.
8 MS. CLARKSTON: Our processes,
9 obviously, are not perfect.
10 MS. EULER: We are the State.
11 MS. CLARKSTON: We are the State.
12 MR. KRAUS: Were we doing the form or
13 a rule or no?
14 (Several people talking simultaneously.)
15 CHAIRMAN: K51 is okay. Go as it is.
16 Turn the page.
17 MS. DUNN: I thought, yes, we're going
18 to address it.
19 (Several people talking simultaneously.)
20 MS. EULER: I don't think there needs
21 to be a form.
22 MR. REINHARD: On what?
23 MS. EULER: Because there's nothing --
24 no reporting there.
25 MS. DUNN: A form developed by rule?

1 MS. EULER: There is no reporting, so
2 why would you need a form?
3 MS. DUNN: Oh, that's true.
4 MR. KRAUS: Well, you have to provide
5 the name and the address, so you have to
6 provide it somehow.
7 MS. EULER: No. You provide -- oh,
8 the name -- that's on the renewal form.
9 MR. KRAUS: Right. That's where I was
10 going. We're developing that form anyway, so
11 --
12 MS. EULER: Right. Okay.
13 MR. KRAUS: -- address it on that form?
14 MS. EULER: Yeah. Yeah. It's all one
15 form.
16 MR. KRAUS: All right. K52.
17 MS. EULER: Yes.
18 MS. DUNN: That's kind of what I was
19 addressing earlier.
20 CHAIRMAN: Okay.
21 MS. EULER: Or you could do it as a
22 separate page to the funeral-director
23 application license. You could do it --
24 because I know that form is -- there is not a
25 lot of room to add anything.

1 MS. DUNN: Is there anything to be
2 addressed by rule?
3 CHAIRMAN: Is the current form
4 applicable to that now?
5 MS. EULER: No.
6 MS. DUNN: No. We would have to just
7 make modifications.
8 CHAIRMAN: Okay.
9 MR. KRAUS: That's what I would think,
10 we would just modify the form.
11 CHAIRMAN: So, do you need a rule for
12 that?
13 MS. EULER: Yeah. No.
14 CHAIRMAN: No?
15 MR. KRAUS: I think we just modify the
16 form.
17 MS. EULER: We just modify the form.
18 CHAIRMAN: The question is, do we just
19 modify the form that goes with all of K52?
20 MS. EULER: Yes.
21 CHAIRMAN: And we're hearing yes.
22 Everybody else in yes?
23 MR. MAHN: Yes.
24 MS. EULER: I don't have a vote, so --
25 CHAIRMAN: Yes? Jim?

1 MR. REINHARD: Yes.
2 CHAIRMAN: John?
3 MR. McCULLOCH: Yes.
4 CHAIRMAN: All yes. So, modify the
5 form.
6 MR. KRAUS: K53, fees, we're going to
7 hit later. K54, address age and registrations
8 to primarily -- let's see. And we have
9 already covered that. We also need to
10 consider a requirement to take Missouri Law
11 exam in time frames.
12 MS. EULER: Does that mean that we
13 need to set out the time frame in which you
14 have to have taken the Missouri Law?
15 MR. KRAUS: I think so.
16 CHAIRMAN: For preneed agents; correct?
17 MS. EULER: Uh-huh. So, if you took
18 the Missouri Law 20 years ago, you can't use
19 it to get an agent license? I'm throwing --
20 that's a question.
21 CHAIRMAN: Not for -- that statement
22 would be incorrect for already licensed
23 funeral directors.
24 MS. EULER: So, do you want to make --
25 put some restrictions on that for agents?

1 MS. DUNN: Right now, the current
2 regulation says if you haven't completed the
3 Missouri Law in the last 12 months, you have
4 to retake it. That's what the current reg
5 says.
6 MS. EULER: For funeral directors?
7 MS. DUNN: And embalmers.
8 MS. EULER: And embalmers. Do you
9 want to be consistent for sales agents?
10 MS. DUNN: Now, there is --
11 MR. REINHARD: A rule change.
12 MS. DUNN: -- that's -- you know,
13 that's being processed that would change that.
14 MR. MAHN: To what? What would it
15 change it to?
16 MR. REINHARD: Any bartender in the
17 state can have a license.
18 MS. DUNN: If you've ever successfully
19 completed the Missouri Law. That was
20 discussed, I think, when Jim was still
21 chairman. I can't remember. If you ever had
22 completed -- successfully completed the
23 Missouri Law, it would count towards a future
24 license.
25 MR. REINHARD: What it is, is that an

1 embalmer -- okay. A guy is a funeral
2 director, he goes to embalming school, he
3 completes that school. When he completes that
4 school, he's got to take the funeral
5 director's test over again. Well, that's
6 ridiculous. Why do you have to put him in
7 double jeopardy, so -- you know, we changed --
8 the rule is being changed that you don't have
9 to take the test again after completing
10 embalming school.
11 MS. DUNN: And after you have
12 successfully completed the Missouri Law. If
13 you --
14 MS. EULER: So, if you took the
15 Missouri Law in 1969, and from 19 --
16 MR. REINHARD: It doesn't have a damn
17 thing to do with this --
18 MS. EULER: -- '70 until 2009, you've
19 been selling used cars, and now you decided
20 you want to be licensed again, do you have to
21 take the Missouri Law?
22 CHAIRMAN: I took the national board
23 embalming test in school in 1987. I can
24 embalm anywhere in the state -- United States
25 with that.

1 MS. EULER: Right.
2 CHAIRMAN: And even if I did sell cars
3 for 15 years later.
4 MS. EULER: Right. Well, and my
5 question is: Is what do you want the rule to
6 be in Missouri?
7 MR. KRAUS: For agents.
8 MS. EULER: For agents? Do you want
9 to --
10 MR. REINHARD: Well, how are you going
11 to example this? Like, if an agent has a
12 funeral-director's license, he's a funeral
13 director, he's going to work for a funeral
14 home or whatever.
15 MS. EULER: But what if he doesn't?
16 MR. KRAUS: What if he's just an agent?
17 MS. EULER: What if he's just an
18 agent? What if he's a counselor? Do you
19 want to set time frames on when they have to
20 take the Missouri Law or not? I'm throwing
21 that out as a question.
22 MR. REINHARD: No. I'd say if you
23 take the Missouri Law, you've taken the
24 Missouri Law. You can be a counselor, you can
25 be a dog catcher.

1 MR. KRAUS: So, you're saying --
2 MS. EULER: So, you're saying --
3 MR. KRAUS: -- don't set out any time
4 frames?
5 MS. EULER: -- no time frames?
6 MR. REINHARD: No.
7 CHAIRMAN: I agree with that.
8 MR. REINHARD: I don't think these
9 guys need to be put pressure on like that.
10 CHAIRMAN: I agree with you. What do
11 you two agree with?
12 MR. MAHN: I would agree with Jim.
13 MR. McCuLLOCH: I don't know if I
14 understand.
15 MS. DUNN: I don't understand.
16 MR. REINHARD: It's helping you.
17 MS. EULER: Jim is saying --
18 MR. McCULLOCH: I'm for it then.
19 MR. REINHARD: Okay.
20 MS. EULER: -- that he thinks the --
21 MS. DUNN: Okay.
22 MS. EULER: Jim is saying that he
23 thinks that we don't need a rule that says you
24 have to take the Missouri Law within X number
25 of time before you apply. That if you took

1 the Missouri Law in 1969 and passed it, and
2 you're applying for a new license in 2009, the
3 fact that you passed it in '69 is good enough
4 for 2009; is that correct?
5 MR. REINHARD: Yes. Yes.
6 MR. McCULLOCH: So, does that go back
7 to the gentleman that's wanting to get his
8 license renewed then? He took the law at one
9 time.
10 MS. DUNN: It's not in effect right
11 now.
12 MR. McCULLOCH: Oh.
13 MS. DUNN: There is a rule that is in
14 progress. Uh-huh.
15 MR. McCULLOCH: (Inaudible.) Would
16 that apply to that individual in that
17 situation?
18 MR. REINHARD: Yeah.
19 MS. DUNN: Uh-huh.
20 MR. McCULLOCH: Let's vote yea.
21 MS. DUNN: But, now, on a new
22 application for an agent, we're not addressing
23 -- they will have to complete the Missouri Law.
24 MS. EULER: That's the question. They
25 would have to have passed the Missouri Law at

1 some time is what Jim is saying.
2 MR. MAHN: At some time in their life.
3 CHAIRMAN: At some time.
4 MS. DUNN: Okay. And if you're an
5 agent and you've never taken the Missouri Law
6 --
7 MR. KRAUS: You have to take it.
8 MS. DUNN: -- what are the time -- in
9 order to become an agent, you need to --
10 MS. EULER: You would have to pass it.
11 MS. DUNN: The Missouri Law. Okay.
12 MS. EULER: At some time.
13 MR. McCULLOCH: Before you can start
14 selling --
15 MS. EULER: Before you can have a
16 license.
17 MR. McCULLOCH: -- or funeral
18 directing or whatever the case might be.
19 MR. REINHARD: Well, wait a minute
20 now. What if they're -- okay. If they're
21 counselors now out there, do we give them a
22 grace period between now and the time they
23 take the test; is that what you're saying?
24 MS. EULER: That's what the interim
25 rule will do.

1 MR. KRAUS: Well, that's built into the
2 transition.
3 MS. DUNN: That's the interim.
4 MR. KRAUS: If they do the notice of
5 intent, then they'll be good --
6 MR. MAHN: Till when?
7 MR. KRAUS: Until the date that you
8 set --
9 MS. EULER: Whatever date you set --
10 MR. KRAUS: -- or until the Board
11 grants or denies their registration but
12 they'll need to apply for registration --
13 MR. McCULLOCH: So, the 2010 rule
14 doesn't apply to that.
15 MS. EULER: No.
16 MR. KRAUS: -- and a part of that
17 would be part of -- would be whether they've
18 taken the exam or not.
19 CHAIRMAN: Is that where the December
20 31st, though, would -- it would stop at that
21 point? I mean, if you didn't get around to
22 it and you didn't have it -- after you did
23 your intent and December 31st rolls around --
24 MS. EULER: Their application is not
25 complete -- well, you could say their

1 application is not completed until they've
2 completed the Missouri Law.
3 MR. KRAUS: Because it's a requirement
4 of the application.
5 MS. EULER: Right. Because they can't
6 have a license until they've passed the
7 Missouri Law.
8 MR. MAHN: Isn't there a date --
9 what's that July date?
10 MR. KRAUS: 2010.
11 MS. EULER: That's just for trust
12 investments.
13 MR. MAHN: Do we want to mirror that
14 date to give them time?
15 MR. KRAUS: That's what you were
16 talking about earlier with regard to
17 potentially for the transition.
18 MR. MAHN: I don't think they've got
19 enough time to get all these agents between
20 now and December 31st.
21 MR. KRAUS: But you could put that out
22 there for the Missouri Exam, too, if you
23 wanted to.
24 MR. McCULLOCH: Someone thought it
25 would be convenient if you had one date for

1 everybody to remember instead of, well, we've
2 got to remember this on October, this is
3 December, this is --
4 MR. KRAUS: Right. Okay.
5 MR. MAHN: I think that was Don.
6 MR. McCULLOCH: Does everyone agree
7 with that still?
8 MR. MAHN: What do you think on that
9 Missouri Law exam?
10 MR. OTTO: Well, part -- one of the
11 issues is when will the Law exam be ready and
12 revised that covers the new law.
13 MS. EULER: It doesn't matter. You
14 can take the law exam now.
15 MR. OTTO: I know. I know you can,
16 but, I mean, the purpose is really to try to
17 make sure people know what the law is. It
18 would be nice if they took the test that was
19 covering the Senate Bill 1 version and, if
20 that's the case, we might need to give them
21 more time to do it.
22 MS. DUNN: There should be an exam
23 format available on August 28th.
24 MR. OTTO: Yeah. I mean, well, then
25 that solves that problem, probably.

1 CHAIRMAN: But that actually only
2 gives them from -- even with the intent to
3 apply, it only gives them from August 28th to
4 December the 31st to be tested and application
5 in; right?
6 MR. MAHN: I'd go with the July 2010.
7 MS. EULER: It's -- they can take the
8 test any time, any day.
9 MS. DUNN: Any day of the week, any
10 time except Sundays, I think.
11 MS. EULER: Yeah. So --
12 MS. DUNN: But they now -- right now,
13 we have to issue a certificate of eligibility
14 for someone interested in taking an exam, and
15 that's an internal process. So --
16 MR. MAHN: Really, it's going to take
17 some time to do.
18 MS. DUNN: Huh?
19 MR. MAHN: It's going to take some
20 time to work up to about --
21 MS. EULER: But it's not going to take
22 a year.
23 MS. DUNN: No. I mean, certificate of
24 eligibilities can be issued -- we try to issue
25 those as soon as we get the -- you know, the

1 phone call or the interest to take it.
2 MS. EULER: Yeah.
3 MS. DUNN: Because as soon as we get
4 that, we send it. And I don't know. Have
5 you had complaints from individuals about
6 their certificate of eligibility, Don?
7 MR. OTTO: No. Not from that at all.
8 There is -- sometimes is -- I have had people
9 say it's sometimes tough to schedule getting
10 into the computer center to get the Law done
11 because they thought they could walk in any
12 day and do it. But, you know, today that
13 might -- yeah. Today might be accountant's
14 day or whatever else they do.
15 MS. DUNN: Yeah.
16 MR. OTTO: So, although it's
17 theoretically possible to take it any day, I
18 guess these computer centers say, no, these
19 are the three days you can take it this month,
20 or something like that.
21 MS. DUNN: Now, I didn't know that
22 because --
23 MR. OTTO: Or it's full up or
24 something. I don't know what it is, but I
25 have had -- I've had no complaints with your

1 office getting the certificate to them.
2 MS. DUNN: And you know it's better
3 than it used to be because they could only
4 take it once a month.
5 MR. OTTO: Yeah. But, yeah. I have
6 had a couple of people that said, well, I went
7 in and I thought I could take it, and then
8 they were filled up with real estate agents
9 that day or something like that.
10 MS. DUNN: Well, anyway, the
11 certificate of eligibility isn't a problem.
12 It doesn't appear to be a problem. The
13 availability in the centers, of course, these
14 centers provide examination service for many
15 professions. Once we set the interim
16 requirements, they should be able to get into
17 their testing -- you know, my intent is not to
18 hold up anyone from furthering -- continuing
19 their career, of course. You don't want to --
20 because that -- the agents are typically the
21 only ones that are --
22 MS. EULER: I would think --
23 MR. MAHN: And you really wouldn't
24 hold up their career, just requiring they take
25 the test by July, is what I was saying. Time

1 people to study and --
2 MS. EULER: Why give them so long?
3 MR. MAHN: Well, I mean, when they
4 decide to take it.
5 MR. REINHARD: Well, Don Otto has got
6 to get his class up and going.
7 MR. MAHN: Right. We've got to get
8 things set up, people to teach the class --
9 MR. REINHARD: How long is it going to
10 take you, Don, to get around to it if you're
11 going to give a class on this?
12 MR. OTTO: Well, starting -- my plan
13 was that starting in September, I would be
14 teaching in Senate Bill 1 as opposed to the
15 old law because I was operating under the
16 assumption that that's about when the Law test
17 would change and we would start covering
18 Senate Bill 1.
19 MS. DUNN: That's a good assumption.
20 MR. OTTO: So, it's not a problem for
21 me at all. Don't worry about me. I just --
22 I don't want -- I picture a rush of people --
23 I mean, no matter when you put the deadline,
24 there's going to be a rush the last week.
25 MS. EULER: Right.

1 MR. OTTO: But I don't know, you know.
2 I can see the argument with December pretty --
3 I don't know how many preneed agents are out
4 there or people are going to do it.
5 MS. DUNN: I have no idea. How many
6 agents --
7 MS. EULER: I have no idea.
8 MR. OTTO: You know.
9 MR. KRAUS: So, Becky, do you think
10 you'll be issuing a certificate like that on
11 everyone who wants to remain a preneed agent?
12 MR. REINHARD: That's a real good
13 point.
14 MR. KRAUS: And, therefore, files a
15 notice of intent to continue being a preneed
16 agent?
17 MS. DUNN: Yes. Yes.
18 MR. KRAUS: You would issue them a
19 certificate on all of them?
20 MS. DUNN: All agents. Uh-huh.
21 MR. KRAUS: Okay. Just to make sure
22 that wasn't going to be a problem.
23 MS. DUNN: Yeah. And the sad part is
24 we have no way of knowing --
25 MS. EULER: How many.

1 MS. DUNN: -- agents because when you
2 create a new profession or a new Board,
3 typically, there is something out there that
4 gives you an idea of how many of those types
5 of licensees there will be, but I have no idea
6 how many agents.
7 MR. OTTO: As a fact -- I mean, I know
8 a lot of people are aware of this already, but
9 some aren't, you know. See, the law goes into
10 effect August. They figure this out in
11 September. December -- the last half of
12 December is always bad for every -- you know.
13 I don't even know what the testing center's
14 hours are during the Christmas season. I
15 don't know. But -- so, that gives you,
16 really, October and November for everybody to
17 take the tests, and I don't know -- if they
18 have the capacity to do that, great. I don't
19 know if they do.
20 CHAIRMAN: Is there some assumption
21 here that the test that these people have to
22 take is the new-law test? I mean, like, they
23 just can't take the old-law test?
24 MS. DUNN: Right.
25 CHAIRMAN: But is that right?

1 MS. DUNN: Yeah. Because there is no
2 -- the law doesn't become effective, and the
3 agents aren't required to be registered until
4 the new law goes into effect.
5 CHAIRMAN: Okay.
6 MS. DUNN: So, we can't do anything in
7 preparation -- you can say, hey, if you want
8 to be an agent, you can take the law now.
9 CHAIRMAN: But even after the --
10 MR. KRAUS: Right. Because the
11 questions are geared towards what the law is
12 on the day you take the exam.
13 MS. DUNN: Right.
14 MR. KRAUS: So, if you take it before
15 August 28th, you're testing under the old law.
16 If you take it after, you're testing under the
17 new law. And we've actually looked at -- well
18 --
19 MS. DUNN: But that would be just like
20 a person coming saying I think I want to be
21 -- I mean, we don't have the authority to deal
22 with agents until the new law passes.
23 MR. KRAUS: Will you need a rule about
24 certificates for the exam with regard to
25 agents?

1 MS. DUNN: Let me -- we can base that
2 on what we do for funeral directors.
3 MR. KRAUS: Sure.
4 MS. DUNN: Yeah. Let's do that.
5 MR. KRAUS: But we'll need one; right?
6 MS. DUNN: Yes. Yes. But the
7 discussion, I guess, is how long are you going
8 to give an agent to get the ability to be
9 licensed.
10 MR. KRAUS: Okay. Most are saying no
11 time frame. But, of course, if they want --
12 if it's part of the application, then I guess
13 you'd have to do it before it's going to be
14 approved.
15 MS. DUNN: Right.
16 MR. KRAUS: If you make it part of the
17 application process.
18 MS. DUNN: Well, or if you apply and
19 then give them within a year of the
20 application date.
21 MR. KRAUS: And if that's already
22 going to be pushed --
23 MS. DUNN: I don't know.
24 MR. KRAUS: Well, but if -- but, I
25 mean, there was talk earlier about the

1 drop-dead date being July 1, 2010.
2 MS. DUNN: Uh-huh.
3 MR. KRAUS: And if that's for the
4 notice of intent to operate, the date that
5 that ends by which your application needs to
6 be approved or denied, that means if the exam
7 is a part of the application process, you're
8 going to have to have that done before that
9 same date anyway, so you do have the same
10 date, essentially, for the exam; right?
11 MS. DUNN: Uh-huh.
12 MR. OTTO: Yeah. Again, my only really
13 concern with it -- and I don't -- it may not
14 be a problem -- is the capacity of the testing
15 centers if they get dumped with a lot of
16 people that, all of a sudden, before December
17 31, all of a sudden, decide to do it. I
18 don't know. They may have plenty of capacity;
19 it may not be a problem. I don't know the
20 answer to the question. But that would just
21 be my one concern is that through the, you
22 know, comment to me -- I don't know. You can
23 probably find out. How many days a week do
24 they do let the funeral directors come in and
25 do it?

1 MS. DUNN: Okay.
2 MR. OTTO: Most of the ones that I
3 know that have taken it have taken it on
4 Saturday because I've heard if you want to
5 take -- this may not apply to this -- but if
6 you want to take both the Law test and the
7 arts exam, they schedule on Saturday because
8 they take the two back-to-back. So, I mean, I
9 know that's an issue for some people is that
10 they've got a problem because the testing
11 center would only do it on a Saturday if they
12 wanted to take them the same day.
13 MS. DUNN: Okay. I'll find out.
14 MR. OTTO: So, maybe somebody just
15 needs to call them up and see what their
16 procedures are and what their capacity is. It
17 might not be a problem.
18 CHAIRMAN: Okay. So, in regard to
19 bubble 54 --
20 MS. DUNN: We'll need a rule to just
21 spell out --
22 CHAIRMAN: -- we will need a rule to
23 spell that out.
24 MR. KRAUS: The certification of the
25 agents to take the exam, yes. Okay.

1 CHAIRMAN: Yes?
2 MR. MAHN: Yes, what?
3 CHAIRMAN: That we need the rule to
4 set that out?
5 MR. MAHN: Well, we need a rule, yeah.
6 MR. REINHARD: Yeah. Set that out and
7 bring it to us.
8 MR. KRAUS: Yeah. We'll draft that
9 and bring it back to a subsequent meeting.
10 MR. REINHARD: Yeah. Let's make a
11 motion on the rest it, you all will just make
12 a rule and bring it back to us and we're done.
13 MR. MAHN: Second.
14 MR. KRAUS: Yeah. And then we'll be
15 walking line by line through a whole bunch of
16 rules that you otherwise would have said, no,
17 never mind.
18 CHAIRMAN: Actually, you're closer
19 than you think to the end of the bill.
20 MR. KRAUS: Section 333.330.
21 MR. MAHN: End of this book, you mean.
22 CHAIRMAN: Today's.
23 MR. MAHN: Yeah. Not the book.
24 CHAIRMAN: Not the book, today's.
25 MR. KRAUS: Well, I like to see that.

1 May not need any emergency rules as it goes
2 towards notice. I mean, most Boards, their
3 authority to deny in discipline statutes are
4 very similar and they operate pretty well
5 without having rules that go into them
6 further, I think. Many Boards have rules with
7 regard to what notice -- how the Board will
8 provide notice, like, of hearings and things.
9 Will they do certified mail, will they do
10 certified mail and regular mail, with they do
11 service process, time frames ahead of time by
12 which they'll provide notice, that sort of
13 thing, and some Boards don't have any. So, I
14 think that's up to the Board as to how you
15 want to spell that out.
16 CHAIRMAN: You think it's good as it
17 is; right?
18 MR. KRAUS: I think it can be. I
19 mean, there are advantages and disadvantages
20 to doing that. I mean, if you want to say,
21 well, we're going to serve everybody by
22 certified mail and regular mail, well, that's
23 additional cost. And if you don't do that in
24 some case, someone can say you didn't follow
25 your own rule and give me notice, so that

1 decision you made at that hearing where I
2 wasn't there is void. You've got to have a
3 do-over. On the other hand, you know, it's
4 not a bad thing to do certified mail because
5 then you have some indication of if they
6 refused, or if the person signed for it, you
7 know for sure they got it.
8 MS. DUNN: And this is only --
9 MR. KRAUS: But if it goes unclaimed,
10 well, then you don't really know if they got
11 it not.
12 MS. DUNN: Yeah. This is only on
13 denials and disciplines.
14 MR. McCULLOCH: Do we have a big
15 problem with that, people saying they don't
16 get them and they try to --
17 MS. DUNN: We do it -- well, right
18 now, on this particular, we send out certified
19 and postal mail, and we have a lot of good
20 licensees, so we don't do this very often.
21 MR. KRAUS: Yeah. And if it's not an
22 issue, then maybe you just leave it as it is.
23 For some Boards, it's a very big issue, so --
24 CHAIRMAN: So, I think we're okay.
25 MS. DUNN: That's what I currently do.

1 MR. REINHARD: Yeah.
2 MS. DUNN: If I have a denial or a
3 discipline, I send it out regular mail and
4 certified.
5 MR. McCULLOCH: That's just when you
6 do it? That's just your practice now and --
7 MS. DUNN: Well, our attorneys, who is
8 the office of the attorney general, has
9 suggested that so that they have some type of
10 exhibit when we --
11 MR. McCULLOCH: So, does this qualify
12 then? It says you will notify them in
13 writing, so that takes care of it; right? And
14 how you send it is up to you currently?
15 MR. KRAUS: It can.
16 MR. McCULLOCH: So, this is fine?
17 MR. KRAUS: It can be.
18 MR. REINHARD: Well, let's just leave
19 it then.
20 CHAIRMAN: Move on.
21 MR. MAHN: Move on.
22 MR. KRAUS: K56. One of the reasons
23 for discipline there is use of controlled
24 substance or alcoholic beverages such that it
25 impairs a person's ability. One of the

1 comments was whether the Board should set out
2 that a DWI qualifies as meeting that criteria.
3 MR. MAHN: I always have a driver.
4 MR. KRAUS: For the purposes of
5 discipline.
6 MR. MAHN: I always have a chauffeur.
7 MR. REINHARD: Just the DWI. That's
8 it. Not like vehicular assault.
9 MR. KRAUS: That was the comment, yeah.
10 MS. DUNN: Well, the reason why it
11 says at --
12 MR. KRAUS: Well, yeah. I mean, you
13 have to be clear, I think, in the rule what
14 DWI meant -- what all that includes.
15 MR. REINHARD: Well, if it's a DWI,
16 and no accident and no dah, dah, dah, dah,
17 dah, I think you could leave it go. But if
18 it's -- but then if it's got into a vehicular
19 manslaughter or vehicular assault or whatever,
20 then you've got to bring them in.
21 MR. KRAUS: Well, and what I hear you
22 saying, if you need to look at the individual
23 situation and what happened and who was
24 injured and you need to bring them in, then
25 maybe that's a case-by-case analysis, and

1 maybe not make a general rule that all DWIs
2 count.
3 MR. REINHARD: Let's just bring them
4 in on an individual basis.
5 CHAIRMAN: Mr. Speaks?
6 MR. SPEAKS: Brad Speaks. I was just
7 getting ready to say what you just said. I
8 think the key phrase is up at the top there,
9 it says the Board may refuse. It doesn't say
10 they have to.
11 MR. KRAUS: Right.
12 MR. SPEAKS: So, that gives the Board
13 the leeway to look at individual circumstances.
14 MR. KRAUS: It does. Even if the DWI
15 certainly falls under sub 1, you still have
16 the option as to whether you --
17 MR. SPEAKS: Exactly.
18 MR. KRAUS: -- impose any discipline
19 or deny. That's right.
20 MR. REINHARD: That would be, yeah,
21 case by case, because if he's a repeater or --
22 MR. KRAUS: All right. So, no?
23 MS. DUNN: No?
24 CHAIRMAN: Leave it as is. This is
25 fine.

1 MR. KRAUS: Moving along. K57,
2 failure to display, set out requirements for
3 display. And we've kind of already talked
4 about that, I think --
5 CHAIRMAN: I think we have.
6 MR. KRAUS: -- in another section.
7 CHAIRMAN: That's taken care of, yeah.
8 MR. REINHARD: Yeah. We don't want --
9 we want you to skip it.
10 MR. KRAUS: K58, oh, boy. Presigning
11 death certificates. Do we need a rule with
12 regard to doing this electronically?
13 CHAIRMAN: How do you presign
14 something that's electronic?
15 MR. KRAUS: You do it on the computer,
16 I guess. I mean, you didn't sit down and go
17 like this, but you effectuated a signature to
18 occur.
19 CHAIRMAN: Yeah.
20 MR. KRAUS: I don't know that that's
21 needed. That was just thrown out there.
22 MR. REINHARD: I don't think it's
23 needed.
24 MR. KRAUS: I think if you went in and
25 made that happen, you could argue that you did

1 sign it, you just did this to sign it instead
2 of this.
3 CHAIRMAN: And the rule would just be
4 agreeing with this statement or setting out
5 that it is or --
6 MR. KRAUS: I think the suggestion was
7 that the rule would clarify that presigning
8 through electronic means counts.
9 CHAIRMAN: Okay.
10 MR. KRAUS: Under this provision.
11 CHAIRMAN: So, in the idea of
12 presigning in electronic means counts, do we
13 need to address that?
14 MR. REINHARD: No.
15 CHAIRMAN: Okay.
16 MR. REINHARD: How the hell could you
17 do that anyway?
18 MS. HAYES: Becky, do you know on the
19 death certificates on the new system, are they
20 going to allow you to even get to a death
21 certificate to do anything on it, like presign
22 it without putting in, like, the person's name
23 at the top?
24 CHAIRMAN: I don't think so. I don't
25 think so.

1 MS. HAYES: So, it may not even be a --
2 CHAIRMAN: Because you have -- the
3 opening screen of that is a very short
4 fill-in-the-forms, and then it identifies the
5 person before it'll ever let you go on through
6 Social Security and other means.
7 MS. HAYES: So, it may not even be an
8 issue, that you can just block it.
9 CHAIRMAN: You can't even get to that
10 section.
11 MR. McCULLOCH: So, if you don't fill
12 in all the boxes, then you don't move on.
13 CHAIRMAN: Not first. Not first.
14 There's a very small window first that you
15 fill in some basic information and then it
16 goes into Social Security's database, whatever
17 else's database, and looks and says, oh, yeah,
18 we found that person. We know they exist.
19 MR. McCULLOCH: Yeah.
20 CHAIRMAN: And then you go on with all
21 the fill-out-the-boxes.
22 MR. KRAUS: All right. Let's see.
23 K59, dead human body, includes cremains. Is
24 that not defined anywhere else?
25 MS. EULER: No.

1 MR. KRAUS: Well, it might be a good
2 idea then.
3 MR. OTTO: That is -- I mean, that's
4 -- be careful with that one. Final
5 disposition is the cremation. I believe that
6 under the Health Department regulations, so
7 the normal rules of final disposition cease
8 after disposition, and disposition is the
9 cremation. At which point then in Chapter 193
10 or 4 rules as to what you do with the
11 cremated remains again. And there's specific
12 rules on -- some specific statutes on who gets
13 the cremated remains.
14 MS. EULER: Yes. But this is about not
15 holding cremains hostage.
16 MR. OTTO: Well, I, frankly, think
17 it's -- if somebody has -- this is my personal
18 opinion now. If somebody has signed a
19 contract saying they're going to pay $5,000
20 for a full-blown ceremony and a cremation with
21 a beautiful urn, and they come to you and you
22 do all that, and they say I want the remains,
23 but I'm not paying you, I'm sorry, I think we
24 should be able to say no. Now, that's
25 different from the right of sepulchral rules

1 and the dead human body. That's a different
2 issue.
3 MR. KRAUS: Do you think the answer
4 should be, no, I'm not going to give you this
5 fancy urn with the cremains, or, no, I'm not
6 going to give you the cremains in a cardboard
7 box, here you go.
8 MR. OTTO: My personal with the issue,
9 the answer should be the funeral director has
10 the option of not -- of giving them upon
11 payment.
12 MR. McCULLOCH: Yeah.
13 MR. OTTO: Yeah. And I believe,
14 actually, the terms --
15 MR. McCULLOCH: Yeah. Because they
16 may owe you a lot of money, not just for the
17 urn, you know.
18 MR. KRAUS: They may. They may. If
19 that person brought suit to obtain possession
20 of those cremains, do you think they would be
21 successful?
22 MR. OTTO: Not under the right of
23 sepulchral law, because that doesn't apply
24 because disposition has already happened. As
25 long as you're following your contract, which

1 is what 194 says you do, and your contract
2 says that you have the right to withhold these
3 upon payment, I don't think they would be able
4 to.
5 MR. KRAUS: So, it would be purely a
6 contractual matter from your perspective.
7 MR. OTTO: It's a contractual matter
8 at that point, I believe, because the Health
9 Department rules say you shall deliver the
10 remains as called for in the contract or as
11 directed by the person, you know, who -- it
12 actually says directed by the person who is
13 responsible for making the payment or is
14 called -- whatever. But in any case, I
15 actually think there's going to be some
16 legislation on this this upcoming year, in any
17 case.
18 MR. KRAUS: There probably should be.
19 MR. OTTO: To deal with this exact
20 issue.
21 MS. EULER: No. It says a licensed
22 funeral establishment that cremates or
23 contracts for cremation of the dead human body
24 may dispose of the cremated remains by, one,
25 delivering the remains to or as directed by

1 another licensed funeral establishment; two,
2 delivering the remains to or as directed by
3 the person who contracted for the cremation;
4 or, three, if not delivered pursuant to
5 scattering or interning unclaimed remains,
6 which is a whole another issue. It doesn't
7 say anything about the money.
8 MR. OTTO: But as directed by, so if
9 you're as directed by the person who
10 contracted.
11 MS. EULER: Yeah.
12 MR. McCULLOCH: Yeah.
13 MR. OTTO: So, if your contract says I
14 can withhold these remains until payment, then
15 that is as was directed by. I'm the one -- I
16 don't have to sign that contract. I don't
17 have to sign that contract.
18 MS. EULER: No, I don't -- yes, you do.
19 MR. OTTO: No, I don't. I can take it
20 somewhere else. I can take it to another
21 place.
22 MS. EULER: I don't think any court
23 would say that. I think the court would say,
24 well, if Bob said I'll sign this contract, but
25 I'm going to X that part out, would you have

1 done it, and you would say no. It's an
2 adhesion contract.
3 MR. OTTO: Can I go to my car dealer
4 and say I want my car back right now, although
5 I owe you $5,000 for repairs?
6 MS. EULER: That's different.
7 MR. OTTO: No.
8 MS. EULER: There's a specific statute
9 that gives the car worker a lien.
10 MR. OTTO: No. There's a specific
11 statute that tries to codify the common-law
12 lien law.
13 MS. EULER: Yeah. But you've got no
14 lien on cremains.
15 MR. OTTO: Who says?
16 MS. EULER: There's no statute that
17 says you do.
18 MR. OTTO: Well, the law isn't the
19 statutes. There is no law on the statutes.
20 MS. EULER: There's a law that says
21 you do.
22 MR. OTTO: There's no -- there's more
23 to -- between -- (inaudible.)
24 MR. SPEAKS: Repeat that one.
25 MS. EULER: First, kill all the

1 lawyers.
2 MR. McCULLOCH: Well, why would you
3 not want us to be able to keep it until we
4 get paid; tell me that.
5 MS. EULER: I'm just saying that this
6 has been --
7 MR. McCULLOCH: Yeah. But you're
8 fighting awful hard to not let us get paid.
9 MS. EULER: But this --
10 MR. KRAUS: Because you'll end up with
11 15 shelves full of cremains and then you end
12 up going out of business 20 years later and no
13 one knows where they go or who they belong to,
14 and they discover, oh, the cremains weren't
15 ever scattered when they thought they were --
16 MR. McCULLOCH: Well, that happens
17 anyway.
18 MR. KRAUS: -- and they want to come
19 back and get them and --
20 MR. McCULLOCH: That happens anyway.
21 MR. REINHARD: And there might be --
22 (inaudible.)
23 MR. McCULLOCH: We have one right now,
24 you know, in Kansas City, that situation.
25 MS. EULER: Well, I throw it out.

1 It's the Board's decision.
2 MR. OTTO: In any case, as far as this
3 statute goes, the statute just says failure to
4 surrender a dead human body.
5 MS. EULER: Yeah.
6 MR. OTTO: I don't think the
7 regulation could expand that under this
8 section to say a dead human body or the
9 cremated remains because the cremated remains
10 are not a dead human body.
11 MR. KRAUS: Well, someone could argue
12 that portions of a dead human body isn't a
13 dead human body, either.
14 MR. OTTO: Well, again --
15 MR. KRAUS: But I think it is.
16 MS. EULER: Right.
17 MR. OTTO: But I think the Health
18 Department regulations is final disposition is
19 cremation take care of that. I just don't
20 think you can add under this section,
21 particularly, a regulation that expands that
22 beyond a dead human body.
23 MS. EULER: Well, what if Joe has paid
24 for the final disposition, but the funeral
25 home refuses to give the cremains?

1 MR. REINHARD: Because of the NPS
2 contract and they owed them more money?
3 MS. EULER: Well, for whatever reason.
4 MR. REINHARD: Very good.
5 MS. EULER: Would you want to be -- I
6 would think that would be grounds for
7 discipline.
8 MR. REINHARD: How many times does that
9 happen?
10 MR. McCULLOCH: Yeah. If they're just
11 holding them up and they've been paid, sure.
12 MR. STALTER: Why would anybody do
13 that, though?
14 MR. McCULLOCH: Yeah. Why would you
15 want to put yourself in that situation?
16 MS. EULER: Who knows?
17 MR. REINHARD: Yeah. We've had a lot
18 of cases on that. We've had a lot of
19 complaints on that, haven't we?
20 MR. STALTER: Can I add to this
21 confusion? I thought this was more like for
22 the first call, that the funeral home got the
23 first call and this wasn't what the family
24 wanted, the first call would have to give up
25 the body. I mean, I thought that's what this

1 was really about.
2 MS. EULER: That's part of what it is.
3 I just throw it out there.
4 MR. STALTER: Okay.
5 MS. EULER: It's Board's decision.
6 MS. DUNN: It looks like nobody likes
7 it.
8 MS. EULER: Yeah. Well, I've been
9 rejected before.
10 MS. DUNN: Yeah.
11 MR. REINHARD: (Inaudible.)
12 MS. DUNN: And I think Don is going to
13 try to work on some legislation this year with
14 --
15 MR. OTTO: We've already been
16 contacted by several legislators that want
17 this clarified.
18 MS. EULER: Yeah.
19 MS. DUNN: Yeah.
20 MR. OTTO: And so, yes, we are going
21 to be proposing legislation that does two
22 things: one, makes it clear that you can
23 withhold the cremated remains if you haven't
24 been paid, and, two, that makes it clear how
25 to dispose of the ones that haven't been

1 picked up.
2 MS. DUNN: Right. Okay.
3 MR. OTTO: Jay Wasson wants -- that's
4 a top priority for him.
5 MR. KRAUS: And, I assume, hold onto
6 the remains only if you haven't been paid?
7 MR. OTTO: Yeah. I mean, otherwise,
8 deliver them to the person who is entitled to
9 them.
10 MS. DUNN: Or gives you a means to
11 dispose of them.
12 (Several people talking simultaneously.)
13 MR. KRAUS: Which is a whole other
14 question.
15 MR. OTTO: It gets really complicated,
16 yeah.
17 MR. McCULLOCH: More than not, you
18 can't get anyone to come and get them.
19 MS. DUNN: Right.
20 MR. KRAUS: Right. But that's not
21 your fault.
22 MS. DUNN: So, this legislation is
23 going to address it.
24 MR. KRAUS: Yeah. You don't control
25 that.

1 MR. McCULLOCH: Maybe we need to pass
2 something that says they have to take them.
3 MS. DUNN: So, Don is going to have a
4 scattering pond.
5 MR. OTTO: Well, yeah. My favorite
6 question I get is, because the law
7 specifically says you can scatter them if
8 they're not claimed, and you follow the steps.
9 And somebody says, well, can I bury them? And
10 I said, sure. That's just really a poor job
11 of scattering them. It's very concentrated.
12 MR. McCULLOCH: It sounds more of a
13 follow-up.
14 MR. OTTO: Yeah. It's a very poor
15 concentrated scattering in burying them. But,
16 yeah, these need to be cleaned up because the
17 law on what to do when they're not picked up
18 is really complicated now and includes usually
19 having to publish a notice in the newspaper
20 and all that stuff, which I've never seen
21 happen, so --
22 CHAIRMAN: Okay. So, now --
23 MR. OTTO: It needs to be cleaned up.
24 MR. KRAUS: K60, we've already talked
25 about. K61, is not entitled or has exercised

1 influence or control over the trustee. And do
2 you want to set out what constitutes control
3 over the trustee?
4 UNIDENTIFIED: (Inaudible.)
5 (Several people talking simultaneously.)
6 MS. EULER: Huh? Payola?
7 CHAIRMAN: What's an example of why
8 that would need to be set out?
9 MR. KRAUS: Of what is or is not
10 control? Let me think.
11 MR. SPEAKS: Isn't that addressing the
12 NPS and affiliated companies where they, you
13 know, single set of a legal entity controlled
14 all these other entities and manipulated the
15 whole thing to their advantage?
16 MS. EULER: That would be one example,
17 yeah. And maybe it's better to leave control
18 undefined and define it as we go, but that was
19 one of the things that was discussed last
20 summer in the working group. And so, we just
21 throw that in here for consideration. Maybe
22 we don't need to define it. Maybe we don't
23 need to say anything further.
24 MR. SPEAKS: Well, I think that's a
25 great point when you've got, you know, really

1 slippery attorneys and you say, hey, you
2 violated this statute, and they say, well, no,
3 we didn't. You overdefined control and what
4 we did does not meet your definition, whereas,
5 this way, it's so broad, you could make your
6 case almost regardless.
7 MS. EULER: Regardless of what Don
8 says; right?
9 MR. SPEAKS: Regardless of what Don
10 and Bill say.
11 MS. EULER: I assume that's who you're
12 referring to.
13 MR. KRAUS: I think both sides could
14 make a case.
15 MR. SPEAKS: No. I was thinking of --
16 (Several people talking simultaneously.)
17 CHAIRMAN: So, that's just leave that
18 alone, is what I'm hearing; correct?
19 MS. EULER: Okay.
20 CHAIRMAN: Everybody agree? All right.
21 MS. DUNN: (Inaudible.)
22 CHAIRMAN: Well, I thought that was
23 the point.
24 MS. DUNN: Okay.
25 CHAIRMAN: And, oh, no. If it's not,

1 say so.
2 MR. SPEAKS: Pardon?
3 MS. DUNN: Did you think it needed to
4 be addressed further?
5 MR. SPEAKS: No, I just --
6 MS. DUNN: You're okay?
7 MR. SPEAKS: Yeah. I was arguing the
8 opposite.
9 MS. DUNN: Okay.
10 CHAIRMAN: So, Board all agree? Okay.
11 As is. Okay.
12 MR. KRAUS: Let's see. And I think
13 the next one, control is over the trustee or
14 has engaged in any other act that has resulted
15 in a shortage in any preneed trust or joint
16 account, a comment was made about -- I think
17 this was with regard to just regular market
18 fluctuations.
19 MS. EULER: That --
20 MR. KRAUS: And if that's the reason
21 for the shortage, that --
22 MS. EULER: That doesn't qualify.
23 MR. KRAUS: -- you're not -- you don't
24 have a problem with discipline.
25 MR. McCULLOCH: What did you say?:

1 MR. KRAUS: I don't know if that's
2 really -- that that is not a disciplinary
3 issue.
4 MR. McCULLOCH: I was going to say, it
5 isn't a disciplinary issue because you have no
6 control over that.
7 MS. EULER: Correct. Right.
8 MR. McCULLOCH: Yeah.
9 MS. EULER: And that's why --
10 MR. KRAUS: Well, the whole market has
11 to come down.
12 MR. McCULLOCH: Yeah.
13 MS. EULER: And that was -- the
14 language of the statute was drafted to make
15 that clear, but I wondered if maybe we needed
16 to say out and out a rule that says changes
17 in the trust account due to market
18 fluctuations don't count. Maybe we wanted to
19 just say that directly so it was clear. Yeah,
20 Don?
21 MR. OTTO: That's a really good one.
22 MS. EULER: To say it?
23 MR. OTTO: Yeah. I mean, I thought I
24 would agree with that one.
25 MS. EULER: Okay.

1 (Several people talking simultaneously.)
2 MS. EULER: Do we need to note that in
3 the record with a gold star?
4 CHAIRMAN: So, Don thinks it's a good
5 idea.
6 MR. KRAUS: Okay. So, we're not doing
7 that. No.
8 (Several people talking simultaneously.)
9 MR. KRAUS: So, yes?
10 CHAIRMAN: So, yes, Board?
11 MS. DUNN: Yes.
12 CHAIRMAN: Yes? Yes?
13 MS. DUNN: Yes.
14 MR. McCULLOCH: So, everybody agrees
15 and all the funeral homes in Festus and DeSoto
16 are out of business. Okay.
17 MS. EULER: Yeah.
18 CHAIRMAN: Okay. That's it.
19 MS. EULER: Don is going to put a lock
20 on their door and all.
21 CHAIRMAN: License revoked tomorrow.
22 MR. McCULLOCH: No, he should have
23 been here.
24 (Several people talking simultaneously.)
25 MR. KRAUS: K63. This is the catchall

1 at the end of this section. We already talked
2 about sellers and agents actions; control, we
3 talked about. And -- okay. I think we've
4 covered those. Injunctive authority. It
5 looks like we're talking about one there with
6 regard to health safety or welfare of any
7 resident. One comment was set out whether
8 that includes financial welfare or not. I
9 don't now if that's --
10 MS. EULER: Two includes money.
11 MR. KRAUS: Right. Whether it
12 includes money.
13 MS. EULER: And we have done that in
14 the past and argued that the word "welfare"
15 includes danger to people's money, and we have
16 been successful on that, but it's always been
17 a little bit of a stretch.
18 MR. KRAUS: Probably bearing with the
19 tribunal you're in front of.
20 MS. EULER: Yes.
21 MR. STALTER: But you did so because
22 you didn't have any other powers under --
23 MS. EULER: Yes.
24 MR. STALTER: Okay. But now under SB
25 1, you should have plenty of powers, so you

1 wouldn't --
2 MS. EULER: But this is our authority
3 to get injunction, so -- I don't know -- I
4 would like to see that added just to make it
5 clear, but --
6 CHAIRMAN: Sharon would like to see it
7 added. Anybody disagree?
8 MS. DUNN: Doesn't appear to be any
9 opposition.
10 MR. McCULLOCH: So, how do you see this
11 working out then?
12 MS. EULER: It's if we got some
13 situation, and I'm not thinking of anything
14 off the top of my head, where there's a
15 substantial probability or danger to people's
16 money. Like, if they've paid for something --
17 I don't -- I'm trying to think of when we've
18 used this, and I remember the people's names,
19 but not the situations. Because if it's a
20 money issue, that's not a health or safety.
21 MR. McCULLOCH: Well, if you're
22 talking about preneed, I mean, it gets into
23 whose money is it.
24 MS. EULER: We're not talking about
25 just preneed. We're talking about preneed and

1 funeral establishment. Like, we had a guy who
2 was telling people he was a funeral director
3 and he was taking people's money for funerals,
4 but he wasn't a funeral director.
5 MS. DUNN: And that's public
6 information in St. Louis.
7 MS. EULER: Yeah. That's a substantial
8 probability. It wasn't serious danger to
9 health or safety, and we argued it was a
10 danger to welfare because it was a financial
11 welfare.
12 CHAIRMAN: Well, due to the possible
13 unsure thought versus -- we really might need
14 it. You guys are going to have to look at it
15 anyway, and they're going to bring it back and
16 we're going to have to look at it anyway, so
17 let's go forth.
18 MS. DUNN: Do it. Do it.
19 CHAIRMAN: One page left. Rule-making
20 authority.
21 MR. KRAUS: 340, K65. Let's see.
22 Standards of service and practice. So, the
23 Board shall adopt and enforce rules for the
24 transaction of its business and for the
25 standards of service and practice to be

1 followed by the professions of embalming and
2 funeral directing for the public good and
3 consistent with the laws. So, I think we do
4 need some kind of rule. As to whether it's
5 an emergency one is up to the Board. But
6 then as to what that rule should be setting
7 out what the standards of service are, I mean,
8 I kind of view that as kind of a code of
9 conduct, code of ethics kind of a thing.
10 There are some out there. I think, is it --
11 MS. EULER: MFDA has them. MFDA has
12 them.
13 MR. OTTO: Yeah, we have that.
14 MR. KRAUS: Yeah.
15 MR. OTTO: But this is already in
16 there. I mean, this was rewritten to expand
17 to include -- (inaudible.)
18 MS. EULER: Right. Right.
19 MR. OTTO: (Inaudible.)
20 UNIDENTIFIED: (Inaudible.)
21 MS. EULER: But what the proposal is,
22 is that even though it's been there, that
23 maybe while we're looking at this, maybe we
24 should think about an ethical rule, a rule of
25 conduct for funeral directors, embalmers, and

1 preneed folks.
2 MR. McCULLOCH: Do we have a lot of
3 problems with funeral directors in that area?
4 Do we have a lot of complaints?
5 MR. REINHARD. Yeah. Like, give us an
6 example.
7 MR. McCULLOCH: Yeah.
8 MS. EULER: No. That's -- Earl?
9 MR. KRAUS: I mean, that -- honestly,
10 that could be as simple as adopting a set
11 that's out there in the world. Or you could
12 start from one of those and adapt one, or it
13 could be a very basic statement of to follow
14 the laws and conduct your business with
15 highest regard to the --
16 MR. REINHARD: So, you could insert
17 the ten commandments.
18 MR. KRAUS: Sorry, what?
19 MS. EULER: Well, I mean, you could
20 use -- there are times -- from time to time,
21 the Board gets complaints where the Board --
22 the consensus of the Board is this funeral
23 director has clearly done something wrong. It
24 doesn't fit within our categories, but it's
25 wrong. I mean, and then --

1 MR. KRAUS: Yeah. Like, they just
2 didn't treat people very well.
3 MS. EULER: They didn't treat them
4 right.
5 MS. DUNN: What about the --
6 MR. KRAUS: It's not subject to
7 discipline, it's not anything you're going to
8 get an injunction on --
9 MR. McCULLOCH: Yeah. But, you know,
10 when we go through those deals, it's always,
11 like, well, maybe it was bad. Maybe they made
12 a bad business decision, but if that's the way
13 they want to run their business, the market
14 will control that.
15 MR. KRAUS: That's true. That's true.
16 MR. McCULLOCH: People would not know
17 the --
18 MR. KRAUS: And this wouldn't be
19 putting any requirements on anyone that will
20 then come back to bite them later through
21 action of the Board. It would be more of a
22 statement by the Board, here's how we expect
23 the members of our profession to act and
24 that's it.
25 MS. DUNN: Like, one would be, like,

1 desecration of a dead human body.
2 MR. KRAUS: Timely responding to
3 inquiries and concerns raised by your
4 consumers. You know, things like that. But
5 nothing is going to happen to you if you don't
6 do this other than market repercussions.
7 MR. McCULLOCH: Yeah.
8 MR. KRAUS: But then the Board has set
9 out here's how we, in our profession, think we
10 should act and perform our duties and services.
11 MS. DUNN: Very obvious to most
12 people, I would say.
13 MR. McCULLOCH: Sure.
14 MR. OTTO: Well, I think it can get
15 real dangerous, though. I mean, we really
16 push our ethics stuff really big --
17 (inaudible.) But it says the Board may
18 prescribe a standard of proficiency. Well, if
19 the Board says you have not met that standard
20 of proficiency, doesn't that sound like the
21 Board should be able to do something about it?
22 But you can't regulate morality, and you can't
23 regulate somebody being nice to somebody on
24 the phone, or you shouldn't try, I don't think.
25 MS. DUNN: Well, what about the

1 example I provided?
2 MR. OTTO: Well, if that needs to be
3 something in -- under the 21 things that you
4 can have your license pulled for, desecration
5 of a body should be in there.
6 MS. DUNN: Yeah. Okay.
7 MR. OTTO: But if you say here's a
8 standard that we think you should uphold, but
9 we're not going to do anything if you don't
10 uphold them, that doesn't sound right.
11 MR. STALTER: As a matter of law.
12 MR. OTTO: As a matter of law. I
13 mean, yeah. I mean, this is the standard --
14 I mean, yeah. As a matter of law.
15 MR. KRAUS: Well, what do you think
16 the shall adopt rules for the standards and
17 service and practice to be followed by the
18 profession? What does that mean?
19 MR. OTTO: I think that gives you the
20 authority to require continuing education.
21 (Several people talking simultaneously.)
22 MR. OTTO: Actually, I think that
23 gives you the authority to require a whole
24 bunch of stuff, but if you put it under there,
25 I think you're requiring it now.

1 MR. KRAUS: And that then they may be
2 -- people may be disciplined for that?
3 MR. OTTO: Yes. I think so.
4 MR. KRAUS: Then why wouldn't it also
5 be under the discipline section?
6 MR. OTTO: Well, that's why I think
7 it's dangerous to put anything under there
8 without thinking about it real carefully.
9 MR. REINHARD: Table this to further
10 day. I mean, like, because you've got -- this
11 is down the road, we can refine this five
12 years from now.
13 MR. OTTO: Yeah.
14 MR. KRAUS: So, no emergency rules?
15 MR. REINHARD: No.
16 MR. KRAUS: Okay.
17 MS. DUNN: No.
18 CHAIRMAN: No. All right.
19 MR. KRAUS: These, we're going to
20 address later, K66, K67, that's the same
21 standards and service of practice. And K68 is
22 kind of the same thing, pointing out that
23 there is a code of professional conduct out
24 there. So, moving on; right?
25 CHAIRMAN: Yeah.

1 MR. KRAUS: Last page.
2 MS. DUNN: Don -- oh, I'm sorry. I
3 thought you were done. I wanted to address --
4 MR. KRAUS: There were additional
5 comments at the very end that were kind of a
6 general nature, I think.
7 MS. DUNN: Okay.
8 MR. KRAUS: Let's see. Projections of
9 revenue. Well, we were going to talk about
10 fees and revenue at a subsequent meeting, so
11 that's later under A. Optional preneed
12 contract to use. That was thrown out there as
13 a comment.
14 MS. EULER: And we've gotten requests
15 for the Board to develop a form contract to be
16 used in the past. I think it's not the best
17 idea, but that's just my opinion.
18 MR. KRAUS: I agree with that, that
19 actually putting out a form contract from the
20 Board is asking for problems -- a whole myriad
21 of problems, but I don't know if there's other
22 comments.
23 CHAIRMAN: I see lots of heads doing
24 this, that that's asking for problems.
25 MR. REINHARD: Who's shaking their

1 head?
2 CHAIRMAN: That whole back row.
3 (Several people talking simultaneously.)
4 MR. REINHARD: They're all lawyers.
5 CHAIRMAN: I know.
6 (Several people talking simultaneously.)
7 MR. KRAUS: All right. So, no?
8 CHAIRMAN: Is everyone in agreement
9 with scratch that; right? Scratch it.
10 MR. KRAUS: Okay.
11 CHAIRMAN: No contract.
12 MR. KRAUS: Now, there was a comment
13 earlier from --
14 CHAIRMAN: Hang on. Go ahead.
15 MR. REINHARD: I mean, I know the
16 statute says what you have to have in a
17 contract, but can't we spell out a little
18 clearer and give them that instead of, like,
19 an actual contract? I mean, the Federal Trade
20 Commission, you can get on their site and find
21 all kinds of stuff.
22 MS. EULER: There's a federal --
23 MR. REINHARD: Well, step up a notch
24 and say with the state, not the counties.
25 MS. EULER: All right. Until we get

1 sued.
2 MR. REINHARD: Well, why can't you
3 break it down, though?
4 MS. EULER: So, I'll look at that as
5 job security for me.
6 MR. KRAUS: I think maybe what you're
7 proposing is where the statute sets out a
8 contract shall include this and this and this,
9 setting out in rules some more specifics what
10 those things mean and what those may --
11 examples of what those things may be. I think
12 that would be much more workable and cause
13 fewer problems than actually putting together
14 a draft contract because I think then that --
15 I think that invites all kinds of problems
16 because people use that, it's determined down
17 two years later that the courts say, oh, this
18 provision in the contract is void. And, hey,
19 by the way, everyone in the state has been
20 using this for years, so all those contracts
21 are void, too, and then we all have a big
22 problem and it's the Board's fault.
23 CHAIRMAN: You're saying --
24 MR. KRAUS: But if you set out
25 requirements in rules or further explain the

1 statutory requirements in rules, then you're
2 not really say what the contract has to be,
3 you're setting out what parts of the contract
4 have to be or have to include.
5 CHAIRMAN: And your thought was just,
6 like, bullet points. A preneed contract shall
7 include: one, two, three, four, five, six,
8 seven, eight, nine.
9 MR. REINHARD: Right. I mean,
10 something to simplify this thing --
11 CHAIRMAN: And forget the examples.
12 Forget the examples.
13 MR. McCULLOCH: You would think if all
14 of this is so clear, you would be able to do
15 that with no problem, but it's not. That's
16 what you're saying. It's too --
17 CHAIRMAN: Good idea. Don?
18 MR. OTTO: If you take a look at -- if
19 you've got Senate Bill 1 on page 17 -- if
20 you've got Senate Bill 1 on page 16 and 17,
21 it gives a list of required disclosures, and
22 some of those, it assumes that the Board is
23 going to come up with disclosure language.
24 Like, include notice that the Board provides
25 by rule that the purchaser has the right to

1 transfer the provider designation to another
2 provider.
3 MS. EULER: Right. And the Board will
4 be doing that.
5 MR. OTTO: Yeah. The actual language
6 that should be stuck in the contract needs to
7 come from the Board.
8 MR. KRAUS: Right. And I think you'll
9 notice throughout the section, wherever there
10 is a comment about certify to the Board or
11 anything like that, we've marked that as does
12 the Board want to provide certification
13 language? Does the Board want to do a form?
14 And when we get to 436, we've done the same
15 thing for those.
16 MR. OTTO: And that's our real concern
17 -- I mean, from our end -- is on August 29,
18 what contract am I going to have a consumer
19 sign?
20 MS. EULER: Uh-huh. Uh-huh.
21 MR. OTTO: I can rewrite one, but I
22 don't want to rewrite -- you know.
23 MR. REINHARD: Insurance.
24 MS. EULER: Yeah.
25 MR. OTTO: Yeah. So, that's our

1 biggest concern is that when somebody comes
2 into the funeral home on August 29th, I'm not
3 breaking the law by having them sign a piece
4 of paper.
5 MS. EULER: Right.
6 MR. McCULLOCH: But you're not going to
7 enforce -- you can just -- we can keep going
8 on with what we're doing; right -- till all
9 this gets cleared up?
10 MS. EULER: Licensingwise, yes.
11 MR. KRAUS: If you do your notice of
12 intent to -- you know, and all that.
13 MS. EULER: Yeah. As --
14 MR. McCULLOCH: Do you think the
15 contracts would be -- the way they're going to
16 be --
17 MR. OTTO: We're good for licensing,
18 we're good for trust investments, but the
19 actual language of the contract, I'd sure like
20 to have the Board's required language --
21 MR. STALTER: Or if we could --
22 MR. OTTO: -- or --
23 MR. STALTER: -- or disclosures by an
24 addendum, you know, a subsequent document.
25 MR. OTTO: Yeah. Say that that's

1 okay, that until such-and-such a date, you all
2 -- you know, you can use your old contracts
3 with the following attachments until
4 such-and-such a date.
5 MR. STALTER: Or some contract with at
6 least the minimum revisions or something of
7 that nature.
8 MR. OTTO: I just don't want to break
9 the law on the 30th.
10 MR. KRAUS: Right. And --
11 MR. OTTO: I'm real easy, I just don't
12 want to break the law.
13 MR. KRAUS: And where the different
14 sections require that this shall be certified
15 and that notification shall be included and
16 requirements like that, then I agree that the
17 Board should set out what complies with that.
18 MS. EULER: Right.
19 MR. KRAUS: But I think that's
20 different than preparing a full contract.
21 MR. STALTER: Oh, yeah. Yeah. We're
22 all on the same page.
23 MR. OTTO: Absolutely. Yeah.
24 MR. STALTER: And -- (inaudible) --
25 didn't get that.

1 MR. REINHARD: No. It's 95 percent.
2 MR. STALTER: No. That's part of the 4
3 percent -- (inaudible.)
4 MR. REINHARD: Four percent even.
5 Okay. I'll tell them.
6 MS. EULER: My guess is that if people
7 want to form contracts, that there are
8 attorneys in the state who would be happy to
9 help them formulate those contracts.
10 MR. REINHARD: Yeah. Brad said he was
11 going to help me with mine.
12 CHAIRMAN: So, the answer is yes,
13 though, we -- no on design of the contract,
14 but we do want, like, bullet points and what
15 is included.
16 MR. KRAUS: And we've marked those as
17 we go through the sections where that comes up
18 that --
19 MS. EULER: Right.
20 MR. STALTER: Yeah.
21 MR. KRAUS: And I think on each of
22 those so far, we've said, yes, we want to put
23 together language for that -- for that
24 certification or whatever.
25 CHAIRMAN: Okay.

1 MS. EULER: And we may want to
2 consider doing some of those as emergency
3 rules if we can get the disclosure language
4 put together.
5 (Numerous people answer yeah.)
6 MR. KRAUS: Okay. All right. Good.
7 Let's see. I think Mark Warren had a comment
8 on C earlier, set out in a rule that
9 insurance-type companies that sell preneed are
10 sellers under this legislation. I had noted
11 that his concern was some forms that are given
12 out may have been misinterpreted as being --
13 where they gave out some forms, and doing so
14 may have been interpreted as them being the
15 seller when they're not the seller, they're
16 just facilitating the transaction, so that's
17 the issue.
18 MS. EULER: Well, if the law is clear
19 that if you are funding preneeds with
20 insurance, that you need to be a licensed
21 preneed seller. And so, when you have an
22 insurance-funded contract, there needs to be a
23 licensed preneed seller in that chain
24 somewhere. And, right now, frequently, there
25 is not.

1 MR. KRAUS: Because someone is the
2 seller.
3 MS. EULER: Someone has to be the
4 seller. And my understanding under the
5 insurance laws is that an insurance company
6 can only be an insurance company. They cannot
7 be a preneed seller and an insurance company
8 and keep their insurance-company license.
9 MR. KRAUS: But you can have someone
10 who is a seller --
11 MS. EULER: I don't know. I have a
12 call --
13 MR. McCULLOCH: You're saying you
14 can't have an insurance company and be a
15 preneed seller?
16 MS. EULER: I have a call into
17 Department of Insurance to get someone to our
18 meeting next week who can clarify that, but
19 that's what I was told.
20 MR. McCULLOCH: There is nothing that
21 says that.
22 MS. EULER: Well, I'm just telling
23 you, that's why we need clarification from
24 Department of Insurance -- or Division of
25 Insurance.

1 CHAIRMAN: So, we need further
2 information.
3 MR. McCULLOCH: All this is pertaining
4 to -- if they're going -- if you're just a --
5 if it's Prudential out here, they're not --
6 they don't come under this. But if it's
7 Homesteaders, they do.
8 MS. EULER: Yes.
9 MR. McCULLOCH: Because they're
10 selling it and they're tying it to funeral
11 goods, services, and --
12 MS. EULER: They have preneed contract.
13 MS. DUNN: And they have a funeral
14 contract.
15 MR. McCULLOCH: Yeah. Then they come
16 under this.
17 MS. EULER: Here's the casket, here
18 are the goods, here are the services, here's
19 this, here's how much it costs, and then you
20 have -- they sell an insurance policy.
21 MR. McCULLOCH: Right. And, now,
22 they're going to register as a seller, as
23 before, like with the State fee, you put that
24 burden back on the funeral home because the
25 funeral industry just kind of thumbed their

1 nose at you and said, look, you're not going
2 to make us do that.
3 MS. EULER: Right. Right.
4 MR. McCULLOCH: So, we put it back on
5 the funeral homes, and this will be kind of
6 the same way.
7 MS. EULER: Well, somebody needs to be
8 a seller in that chain.
9 MR. SPEAKS: Where is the definition
10 of seller here?
11 MR. STALTER: Oh, we passed that a
12 long time ago. And part of what's driving
13 this is Texas. Texas took a route, they're
14 trying to make the insurance companies assume
15 their responsibility. I don't know whether
16 that passed or not, but that's what scares the
17 insurance companies that will have it in other
18 states.
19 MS. EULER: Yeah. Well, and that's
20 something that's going to be new for Missouri,
21 you know.
22 MR. OTTO: I know we have problems
23 right now with a couple situations. I mean, I
24 don't think it's legal problems, but it's
25 confusing problems, where a funeral home has

1 sold a preneed -- sold -- put that in
2 quotation marks. The funeral home and the
3 consumer, if they have a contract for a
4 preneed that was funded by, as a matter of
5 fact, Prudential where the -- it was a
6 Prudential Insurance agent that sold the
7 policy, but nobody is listed as the seller.
8 MS. EULER: Right.
9 MR. OTTO: On the contract.
10 MS. EULER: Right.
11 MR. OTTO: The funeral home is listed
12 as the provider, it's paid for by Prudential
13 Insurance Company, and there's not even a line
14 on their piece of paper that says who the
15 seller is.
16 MS. EULER: Well, and that's the way
17 the Homesteaders contracts and Forethought
18 contracts are, too, so --
19 CHAIRMAN: So, what do you need to --
20 MR. OTTO: I've been trying to get
21 Prudential to do it.
22 MS. EULER: So, I don't think -- I
23 think we need to get input from Division of
24 Insurance --
25 MS. DUNN: On clarification.

1 MS. EULER: -- and this really falls
2 under what we're going to talk about next week.
3 CHAIRMAN: Okay. Further information.
4 MR. McCULLOCH: Some of us have
5 funeral home -- (inaudible.)
6 MR. STALTER: Yeah. Right now.
7 (Several people talking simultaneously.)
8 MR. McCULLOCH: So, if you've got an
9 agent out there doing that, they're doing half
10 of it right, how does that tie in?
11 MR. OTTO: I think you could get a
12 rule to fix it.
13 MR. McCULLOCH: To fix that?
14 MR. OTTO: I think you can get a
15 little fix-it, but you're right; we better
16 hear from insurance first.
17 (Several people talking simultaneously.)
18 MR. KRAUS: All right. Create an
19 overview of all the time-related requirements.
20 I think that was a suggestion to staff or by
21 staff. I don't recall.
22 MS. EULER: Yeah.
23 MR. KRAUS: That's something that
24 might be useful to put out there for licensees.
25 MS. EULER: As part of our educational

1 materials.
2 MR. KRAUS: Right.
3 CHAIRMAN: Everyone agrees; correct?
4 MS. EULER: Yeah. And E, the same.
5 Something we can address in our educational
6 materials.
7 CHAIRMAN: Perfect.
8 MS. CLARKSTON: Sharon, and you
9 mentioned educational documents. How are
10 those coming? We've gotten a court request
11 from a representative's office to include it
12 and mailing to his constituency.
13 MS. EULER: I need to be in my office
14 to work on those.
15 MS. CLARKSTON: Okay.
16 MS. EULER: So, that's on my list of
17 things to do.
18 MS. CLARKSTON: So, their deadline is
19 this Friday, I need to tell him that --
20 MS. EULER: They won't be ready by
21 Friday.
22 MS. CLARKSTON: Okay.
23 MS. EULER: And you can tell him that,
24 in part, we need to wait until the Board has
25 proposed rules because the rules are going to

1 be a big part of those educational materials.
2 MS. CLARKSTON: I've started that
3 conversation already, just wanted to verify
4 they weren't going to be ready.
5 MS. DUNN: I wanted to address the --
6 Don, Tab did some checking while we were in
7 the meeting, and she contacted the conference
8 and Pearson Vue contact, and they are not
9 aware of any limitations by profession or
10 licensure type or exam type. They said that
11 they are open Monday through Saturday starting
12 at 7:30, and they may have had days filled up
13 where they'd say, oh, only Monday is available
14 this week, but they don't restrict their
15 examination centers to any type of profession
16 on certain days.
17 MR. OTTO: Okay.
18 MS. DUNN: So, if you get examples of a
19 testing center, I would like to know because
20 they said they'd like to know.
21 MR. OTTO: Yeah. Well, the ones that
22 heard were -- like I said, they want to take
23 both tests, law and arts the same day, and
24 they were told if you want to do that, come
25 in on Saturday. That must be their slow day.

1 MS. DUNN: Okay. And then, but, also,
2 like -- they're not aware of today we're
3 giving CPAs Wednesday, Thursday, and Friday,
4 and no funeral directors.
5 MR. OTTO: Okay. If I get any
6 specific names from anybody, I'll pass them on.
7 MS. DUNN: Yes.
8 MR. REINHARD: What day do they give
9 the bar?
10 MS. EULER: It was last Tuesday and
11 Wednesday.
12 MS. DUNN: Oh. Don Lakin wanted to go
13 on record asking Connie if the Hancock
14 Amendment affects any of this, and he wanted
15 to be on record, and he also told me that he
16 wanted on record that he agrees with most of
17 Bill's comments -- well, 96 percent.
18 (Several people talking simultaneously.)
19 MS. CLARKSTON: I don't know that
20 Connie is the perfect person to answer the
21 question about the Hancock Amendment. I think
22 that's a legal question.
23 MS. DUNN: Okay. So, would that be
24 Earl or Sharon?
25 (Several people talking simultaneously.)

1 MR. KRAUS: Well, did Bill have any
2 comments about Don?
3 MR. REINHARD: Yeah, Bill. Have you
4 got a remark back to him?
5 MR. KRAUS: Do you have any comments
6 about Don that Don would agree with?
7 (Several people talking simultaneously.)
8 MS. EULER: Becky, I suggest that you
9 communicate to Mr. Lakin that the Board would
10 be happy to look at the Hancock issue if he
11 could specify exactly what he sees as the
12 Hancock problem.
13 MS. DUNN: Can we delegate that to a
14 Board member?
15 MR. REINHARD: I'll be glad to tell
16 him go jump off a bridge.
17 MR. KRAUS: I honestly think that his
18 concerns about revenue will be addressed when
19 we talk about revenue projections and fees,
20 and where that money goes and that kind of
21 thing.
22 CHAIRMAN: All right.
23 MR. KRAUS: I may be wrong.
24 UNIDENTIFIED: No.
25 MR. KRAUS: What's that?

1 MS. CLARKSTON: So, you're saying it
2 is back over here. (Inaudible.)
3 MR. KRAUS: Well, I think your normal
4 discussion about those items will answer his
5 questions.
6 MR. OTTO: Just two things completely
7 -- something completely different. I want to
8 get your mind off it real quick. We talked
9 about the NPS proof-of-claim form earlier.
10 Those proof-of-claim forms went out not only,
11 apparently, to every NPS contract holder in
12 the state of Missouri that they had in their
13 database, but other people.
14 MS. EULER: No. You missed that.
15 MR. OTTO: No, I was here.
16 MS. EULER: No, you weren't.
17 MS. DUNN: No, you missed --
18 MR. OTTO: Oh, I missed it. Okay.
19 MS. EULER: You missed it. I talked
20 to the folks in Texas this morning about that,
21 and I gave them some specific examples, as did
22 Chuck Renn. And so far, everybody who said I
23 don't have an NPS contract that they've
24 checked on, they actually do have an NPS
25 contract.

1 MR. McCULLOCH: It may have been with
2 the cemetery.
3 MS. DUNN: But it could be cemetery
4 related.
5 MR. OTTO: Well, that wasn't my point
6 anyway.
7 MS. EULER: Okay.
8 MR. OTTO: Reportedly, a whole lot of
9 people have gotten these proof-of-claim forms.
10 MS. EULER: Yes.
11 MR. OTTO: A bigger universe of people
12 even than we thought would get them, perhaps
13 legitimately, but a large number of people got
14 them. I know that it's generating huge
15 amounts of calls to my office, to every
16 funeral home in the state, probably, and I'm
17 sure this office here has been stocked.
18 MS. EULER: And my office, as well.
19 MR. OTTO: What I've asked everybody
20 for and it is, I am asking, hoping, begging,
21 that some government agency, whether it's the
22 attorney general's office, whether it's the
23 State Board, whether it's the Division, the
24 Department, somebody, issue a press release to
25 the public that tries to explain this a little

1 better, and then perhaps direct them to a
2 phone number like the hotline or something
3 like that for more questions. You know, the
4 key things the information that needs to be
5 gotten out to the public are, one, this
6 proof-of-claim form has nothing to do whether
7 or not you're getting your funeral.
8 MS. EULER: Some of the funeral homes
9 seem to be confused about that, as well.
10 MR. OTTO: I agree with that, as well.
11 But this has nothing to do with whether or not
12 you're getting your funeral. This is a
13 separate matter. Two, if you're making -- if
14 you're currently making installment payments
15 to NPS on a contract, don't stop doing that
16 because of this filing. Now, maybe you want
17 to stop doing that for other reasons, but
18 that's your business. But don't stop doing it
19 because of this filing. And, three, getting
20 people not to panic and be upset. I mean, I
21 sent something out, but you all, I'm sure,
22 read that on the front page of the paper what
23 I sent out. Ha! No. You know, it's in
24 somebody's trash can at the AP's desk, I'm
25 sure. But I would really greatly appreciate

1 it, and our members would greatly appreciate
2 it if some -- I asked Texas to do it, Texas
3 said they're not going to do it. Flat out,
4 no, no, they're not going to do it. But I
5 think some sort of press release from any
6 governmental body that explains to the
7 consumers don't panic, this is the normal
8 process that's required by Texas. Just
9 because you got these, you know, does not mean
10 you're not going to get your funeral or
11 anything like that. That doesn't matter. And
12 then, also, like I said, I've had a couple
13 people that called me up and thought, well,
14 does this mean I should stop sending my
15 installment payments in because they're
16 bankrupt. No, don't. Now, again, there might
17 be a business decision not to send that down
18 for other reasons, but don't stop making them
19 because of this filing. And I just think that
20 would be hugely beneficial to the public and
21 to a lot of funeral directors, as well.
22 MR. McCULLOCH: Can the news guy here
23 do that?
24 MS. DUNN: The only problem I see is,
25 that legal will probably tell me, is if we

1 make those broad statements, is there going to
2 be something in that statement that could get
3 us in trouble at some point? I don't know.
4 I mean, I'd love to be able to do something
5 like that. Chuck Renn was going to send me
6 some bullets from him that we could utilize
7 that were quoted from him, but he hasn't sent
8 those to me yet. So, if he sends them to me
9 and they're his statements, or if, legally, if
10 you all think we could make some broad
11 statements on clarification, it would be
12 great. It would help all of us, but --
13 MS. EULER: I don't know. It sounds
14 to me like something to discuss with the
15 Department.
16 CHAIRMAN: I think I would just say --
17 MR. McCULLOCH: I think you need to do
18 it because that's what should be done to
19 clarify all this. And if somebody wants to
20 try to sue on that, then you guys, that's what
21 you do -- handle that.
22 MS. EULER: To sue -- who's going to
23 sue who?
24 MR. McCULLOCH: The AG would just
25 handle that, just say go away, leave us alone.

1 What I'm getting at is --
2 MS. EULER: I missed the first part of
3 --
4 MR. McCULLOCH: It's what we should
5 do. It's the right thing to do for the
6 residents here. You need to try to clarify
7 all this and get this information out.
8 MS. EULER: Right.
9 MR. McCULLOCH: We can't not do things
10 because we're afraid we're going to get sued.
11 That's my point.
12 MR. SPEAKS: Nice point.
13 MR. McCULLOCH: I mean, they've just
14 got to do what needs to be done.
15 MR. MAHN: Shouldn't that come out of
16 the AG's office, though?
17 MS. EULER: We are getting a lot of
18 calls and we are clarifying things for people.
19 MR. MAHN: No. But I mean the
20 statement? Shouldn't the statement come out
21 of the AG's office?
22 MS. EULER: I can take that up.
23 MR. MAHN: I think that's where it
24 needs to come. They're the ones that's been
25 fighting it.

1 MS. DUNN: I'll also follow up with
2 Chuck to see what --
3 MR. McCULLOCH: I think it needs to be
4 done timely, though.
5 MS. DUNN: Right.
6 MR. McCULLOCH: I mean, sooner than
7 later.
8 CHAIRMAN: Everybody take it up and
9 follow it up and see where it can go.
10 MR. MAHN: I think sometimes the
11 people expect us, the Board, to be able to do
12 things over and above what we're here for, you
13 know. We regulate license, establishment,
14 funeral directors, embalmers, and now preneed
15 agents eventually. A lot of these other
16 miracle things they expect us to do, like we
17 should have kept from all these letters being
18 sent out, we have no jurisdiction over this
19 stuff. I mean, I would have loved to not
20 seen them letters go out, either. I'm getting
21 phone calls, texts, and we're getting several
22 phone calls and people walking in a day, but,
23 you know --
24 MS. DUNN: The problem is, the
25 consumers and the funeral homes don't know

1 where to go.
2 MR. MAHN: Right. But the consumers
3 should be notified, the statement -- the
4 public-relations statement should be made from
5 the attorney general's office, not the State
6 Board.
7 UNIDENTIFIED: Since we're out of
8 business over there, I've got 15 counselors
9 that are calling -- (inaudible.)
10 CHAIRMAN: Have you got something else?
11 MR. OTTO: No. I just had a couple
12 other little things that I wanted to --
13 CHAIRMAN: Okay.
14 MR. OTTO: We have some good news --
15 well, a little bit of good news. Our -- the
16 Funeral Directors and Embalmers Association
17 has received a grant of almost $420,000. It's
18 Homeland Security money directed to the
19 Department of Health to purchase disaster
20 supplies, so that -- because our disaster team
21 is part of the State Emergency Management
22 Agency plan.
23 MR. MAHN: Is that out of the stimulus
24 money?
25 MR. OTTO: No. It was before that, so

1 it's, basically, 9/11 money.
2 MR. MAHN: Got you.
3 MR. OTTO: Homeland Security money.
4 So, we'll be -- we'll soon -- I'll soon be
5 sitting, literally, on top of 10,000 body bags.
6 MR. REINHARD: For everybody in the
7 state of Missouri, just not the association
8 members; right?
9 MR. OTTO: Yeah.
10 MR. REINHARD: Okay.
11 UNIDENTIFIED: (Inaudible.)
12 MR. OTTO: Yeah. Well, yeah. We are
13 -- we received the grant. Our association
14 received the grant for our disaster team to
15 buy these supplies.
16 MR. REINHARD: But it should be for any
17 funeral home in the state that's going to have
18 a disaster in their county.
19 MR. OTTO: We're activated by either
20 -- we're annexee to the State Emergency
21 Management Plan. We're activated either by
22 the county coroner or the SEMA emergency
23 operation center and they tell us what to do,
24 so that's easy. There's that, and then the
25 other thing that, at some point in time, I

1 would hope -- I mean, you've got too much on
2 your plate already, but I know some of the
3 Board members attended the
4 electronic-death-certificate demonstration and
5 we did get a couple bombshells dropped on us,
6 in my opinion, at that meeting. One was the
7 confirmation the first time that was said
8 blatantly that doctors are not going to be
9 required to use the system, ever. And,
10 secondly, that after January 1, 2010, if the
11 doctor is not on the system, you will have to
12 -- the field director will have to start the
13 process on the computer, start the
14 death-certificate process, then print off a
15 piece of paper, which you will then take to
16 the doctor and have them sign physically by
17 hand, and then mail it to Jefferson City where
18 they will process it and let you know when
19 your death certificate will be available. So,
20 you will lose the option which is currently in
21 194 of going to your local registrar or health
22 department within the first 24 hours and
23 getting a death certificate.
24 UNIDENTIFIED: That's a bad plan.
25 CHAIRMAN: Actually, a funeral

1 director can play that same game. He -- not
2 just doctors. He doesn't have to apply by the
3 electronic system. He can just drop it to
4 paper and go on and just --
5 MR. OTTO: But you're going to have to
6 be on the electronic system to drop it to
7 paper.
8 CHAIRMAN: Well, that's true.
9 MR. OTTO: I mean, you're going to
10 have to have a computer, you're going to have
11 to have a log-in name, and you're going to
12 have to start the process.
13 CHAIRMAN: Why?
14 MR. OTTO: Because they're requiring
15 it.
16 CHAIRMAN: Why? If you have to drop
17 it to paper, why can't you just fill out the
18 old form, or will they not produce the old
19 forms any longer?
20 MR. OTTO: No. Yeah. Eventually,
21 they won't have them.
22 CHAIRMAN: Well, I've 10,000 of them
23 in a file drawer, so stock up now.
24 MR. OTTO: Yeah. Stock up now.
25 (Several people talking simultaneously.)

1 MS. DUNN: Connie, is Healing Arts
2 going to try to get this on their agenda in
3 October?
4 MS. CLARKSTON: Yes, they are.
5 MS. DUNN: For open agenda?
6 MS. CLARKSTON: That's my
7 understanding.
8 MS. DUNN: Okay. So, I will keep in
9 touch with Healing Arts and get that on our
10 Web site and out to everyone about Healing
11 Arts talking about this at their next open
12 agenda.
13 CHAIRMAN: Okay.
14 MS. DUNN: Now, did somebody --
15 somebody called me the other day and said --
16 and I haven't talked to Ivra, that now they've
17 realized they have to have a statute change?
18 MR. OTTO: I heard that same
19 conversation probably from the same person.
20 MS. DUNN: Okay.
21 MR. OTTO: But I don't know. I mean,
22 the statute that created the
23 electronic-death-certificate system, such as
24 it is, does not abrogate the Health Department
25 law that's currently on the books that says

1 within the first 24 hours, you can get a
2 certified copy from your local registrar or as
3 designated by them. So, how can she say as
4 of January 1, you can't do that anymore when
5 the statute says you can? Good question.
6 MS. DUNN: Okay.
7 CHAIRMAN: Anything else?
8 MS. DUNN: Housekeeping.
9 MS. EULER: I have nothing. I'm done.
10 CHAIRMAN: Okay.
11 MS. DUNN: Yeah. I am, too.
12 CHAIRMAN: So, just adjourn. Motion to
13 adjourn?
14 MR. MAHN: First.
15 MR. McCULLOCH: Second.
16 CHAIRMAN: Jim?
17 MR. REINHARD: Yes.
18 CHAIRMAN: All right. We are
19 adjourned. Thank you all. It's worse than
20 going to the dentist.
21 (Off the record)

I, Kristy B. Bradshaw, a Certified Court Reporter in the State of Missouri, do hereby certify that the foregoing transcript constitutes a full, true and correct record of said proceedings that were held on August 5, 2009; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 26th day of August, 2009.

Kristy B. Bradshaw

KRISTY B. BRADSHAW, CCR

(4) In the violation had previously been detected, but inadequate policies and procedures were implemented to prevent reoccurrence.

! *<u>Comments</u>: 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.*

<u>Response:</u> 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 proposed recommendations would require additional funding for the Board to regulate the proposed provisions and to fulfill all statutory obligations.

The Working Group unanimously approved the following recommendations:

- Licensing and renewal fees for preneed seller, providers and agents as established by the Board by rule. If both the preneed sellers/providers are required to pay fees, the preneed agent licensing fees should be minimal and proportionately lower than preneed seller/providers.
- Preneed sellers should continue to be assessed a two-dollar fee per preneed contract sold during the annual reporting year as currently required.

CONCLUSION

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 impacting Missouri, 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 you may need.

Additional Handouts – August 5, 2009

STALTER LEGAL SERVICES, LLC

WILLIAM R. STALTER
wastal@swbell.net

9300 METCALF AVENUE, SUITE 202
OVERLAND PARK, KANSAS 66212

TELEPHONE (913) 378-9920
FAX (913) 378-9924

August 3, 2009

Becky Dunn
State Board of Embalmers and Funeral Directors
3605 Missouri Boulevard
P.O. Box 423
Jefferson City, MO 65102-0423

Re: Upcoming meeting 8-5-09

Dear Becky:

In preparation for the upcoming meeting this Wednesday, I am sending you some of my comments and questions.

333.151

The last sentence begs for clarification, but can the State Board pass regulations regarding this section? The audited financial statement requirement is problematic in at least three ways.

1. The intent was to require independent verification that Board candidates own or operate a business that complies with Chapter 333 and Chapter 436. However, the section seems to preclude funeral directors that do not own a licensed funeral establishment.

2. Another other issue relates to the grammatical error made in describing "at-need preneed business". The intent was that the financial statement would have to cover both at-need business and preneed business.

3. The more significant issue is that the audited financial requirement imposes a significant cost that does not accomplish the goal of proving compliance with Chapter 333 and Chapter 436. Audited financials are intended to prove that the business is accurately reporting its revenues and expenses, which is not the same as compliance with the statutes.

333.310

SB1 contains two 'cemetery exemptions' (Section 333.310 and Section 436.410). Section 333.310 was intended to exempt cemeteries from the State Board jurisdiction and Section 436.410 was intended to exempt cemeteries from Chapter 436. In the initial drafts of SB1, these provisions mirrored each other. Through the legislative process, the 'mirror' was broken. While the Chapter 436

exemption is slightly broader (it contemplates a preneed contract with merchandise), both have the same fundamental problem.

> **333.310 The provisions of sections 333.310 to 333.340 shall not apply to a cemetery operator who sells contracts or arrangements for services 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 333.310 to 333.340 if the contract or arrangement sold by the operator includes services that may only be provided by a licensed funeral director or embalmer.**

> **436.410. The provisions of sections 436.400 to 436.520 shall not apply to 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 436.400 to 436.520 if the contract or arrangement sold by the operator includes services that may only be provided by a licensed funeral director or embalmer.**

The State Board exemption references contracts or arrangements for services, without reference to merchandise. Consequently, the State Board has jurisdiction over cemetery merchandise sales and licensing requirements. Both exemptions define an arrangement where the purchaser's preneed payments are deposited to an endowed care fund or a segregated account. Preneed payments are not deposited to endowed care trusts, and the segregated account for markers/monuments was eliminated by SB296.

333.315

Will there be any special requirements of corporate providers with multiple locations?

333.315.2 (2)

With regard to the third party seller context, will the Board establish what 'books and records' will be required of the Provider?

333.315.2(6) (and 333.320.2(3))

Is the purpose of this paragraph to clarify that a corporate provider license does not impact the right of the corporation's officers, directors and shareholders from also being licensed?

333.315.3(d)

This paragraph provides the Board flexibility to expand the Provider's annual report form by reference to other statutes and regulations. Eventually, the Board will want to promulgate an individual regulation for each of the new annual reports (provider, seller and trustee).

333.320.2(7)

As point of clarification, the Section 685 qualified funeral trust is not a grantor trust.

333.320.2(8)

How must trustee changes be documented with the Board? When?

333.325.1

It would be redundant to require funeral directors who sell for their own establishment to register as a preneed agent, but what about the preneed salesman who gets a FD license?

333.330.2(8)

Granted, the Board needs powers to act quickly, but due process protections could be violated depending upon the stage of "disciplinary action" or the nature of the alleged violation. In the absence of a formal adjudicative proceeding, a complaint (based solely on a disciplinary action in another state) that is without additional facts and circumstances added to Missouri business practices would be improper. Similarly, the disciplinary action unrelated to preneed may not be an appropriate basis for a complaint on the licensee's seller license.

Sincerely

William Stalter

WRS/kd

TRUST FUNDED PRENEED PLANS

The Working Group unanimously approved the following recommendations:

- Sellers should be required to issue receipts to the purchaser for preneed payments received by the seller.

The Working Group approved the following consensus recommendations:

- 100% of all payments for a trust-funded preneed contract should be deposited into trust. Sellers should be authorized to submit a request to the trustee for administrative expenses (see Additional Comments below).

> ! *Comments: APS and Meierhoffer suggested that requiring sellers to request expenses from the trustee would create additional administrative expenses that may be passed onto the consumer. APS and Meierhoffer strongly recommended retaining the current process of allowing the seller to retain the first 20% of contract payments and to trust the remaining 80%.*

- Payments for trust-funded preneed contracts should be deposited into trust within sixty-days of receipt.

> ! *Comments: Participants 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.*

- Seller administrative expenses should be authorized from the initial payments received.

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:

- No administrative expense should be allowed.
- Three quarters (3/4) of 1% of the face value of the Preneed Contract.
  - Josh Slocum
  - *Note: This provision models New York's preneed legislation.*
- ***Ten percent of face value: The majority of Participants agreed that 10% of the contract's face value would be a reasonable compromise.***
  - AARP
  - Silver Haired Legislature
  - Rep. Meadows
- Ten to fifteen percent
  - DIFP

- Twenty percent of face value
    - Mike Meierhoffer
    - Kutis Funeral Home
    - John McCulloch
    - Mike Winters
    - Austin-Layne

REGULATION OF TRUSTS & TRUSTEES

The Working Group unanimously approved the following recommendations:

GENERAL REQUIREMENTS:

> ! *Comments: Bill Stalter recommended that regulation of the trust and trustee functions activities would be better served if oversight of the trust was transferred to the Division of Finance.*

- Trustees of a preneed trust must be a state or federally chartered institution authorized to exercise trust powers in Missouri.
- Provisions of the Uniform Trust Act under Chapter 469 and Chapter 456 should not be wholly incorporated into Chapter 436.

> ! *Comments: Participants commented that Chapters 469 and 456 contain provisions that are not suited for preneed. For example, Chapters 469 and 456 allow the trustee and grantor to modify the statutory requirements by agreement. It was also suggested that the definition of income would be inappropriate for Chapter 436.*

- 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 which established the trust.

The Working Group approved the following consensus recommendations:

- 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.*

The Working Group approved the following majority recommendations:

- Income of the trust should accrue and should generally 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.*

TRUSTEE DUTIES:

The Working Group unanimously approved the following recommendations:

- The prudent investor rule should be adopted for trustees. 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.

- 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.

- 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.

- 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 recommendations were made:

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

- "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 polices of a person, whether through the ownership of voting securities, by contact other than the power is the result of an official position with or corporate office held otherwise, unless the power is the result of an official position with or corporate office held by the person.

- Control 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.

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

- Investment of trust funds should be limited to investments that have reasonable potential for growth or producing income.

- Trustees should be specifically restricted from investing trust funds in any insurance product.

(Homesteaders comment: The banning of term insurance as a trust investment is clearly recalled, as is the recommendation to ban the trust investment in life insurance on any life other that the purchaser, but no recollection is made on the clear ban of all insurance products as trust investments. Under prudent person guidelines there should be no need to restrict the trustee from investing in life insurance or annuities that the trustee deems to be prudent investments.)

- Diversification of trust assets should be mandatory unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better serviced without diversifying.

- In investing trust assets, a trustee should be required to consider:
  - General economic conditions;
  - The possible effect of inflation or deflation;
  - The expected tax consequences of investment decisions or strategies;
  - The role that each investment or course of action plays within the overall trust portfolio;
  - The expected total return from income and the appreciation of capital;
  - Other resources of the beneficiaries known to the trustee;
  - Needs for liquidity, regularity of income, and preservation or appreciation of capital;

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

- Trustees and preneed licensees should be prohibited from procuring or accepting a loan against any investment or asset of the trust.

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

SELECTIONS OF AGENTS/INDEPENDENT INVESTMENT ADVISORS:

- Trustees should only delegate duties and powers to an agent that a prudent trustee of comparable skills could properly delegate under the circumstances.

- If an agent is selected, the trustee should exercise reasonable care, skill, and caution in:
  - Selecting an agent;
  - Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
  - Periodically reviewing the agent's actions and monitoring the agent's performance and compliance with the terms of the delegation.

- 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.

- Agents that accept a delegation of powers or duties from a trustee should be deemed to have consented to the jurisdiction of Missouri courts.

- By selecting an agent, a trustee should not be relieved of any duty or responsibility imposed on the trustee by Missouri law.

The Working Group approved the following recommendations by majority vote:

- Sellers should be allowed to approve the investment advisor selected.

> ! *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 occur again. 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.*

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Dated August 17, 2008 at 5:00 p.m.

INSURANCE-FUNDED PRENEED PLANS

The Working Group adopted the following unanimous recommendations:

- Currently, Chapter 436 does not clearly authorize insurance-funded plans. Insurance funded preneed plans are a safe and necessary option. Accordingly, Chapter 436 should clearly authorize insurance-funded contracts.

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- Insurance law should not apply to preneed contracts but should apply to any insurance sold with a preneed contract.

- 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 initial insurance premiums as established by the insurer.

- In no instance, should a term life insurance product be used to fund a preneed contract. However, consumers should be allowed to assign proceeds from a term-life insurance product to a provider, or to designate a provider as an assignee (Homesteaders comment: Since the assignee stands before the beneficiary in claiming rights under the insurance policy, based on the assignee's performance, there is no reason the designate the provider or seller as beneficiary under the policy.) under a preneed contract, provided that the assignment is not related to, or done in contemplate of, executing the sale of a preneed contract.

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> ! **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 consumers who are older or have significant health problems may qualify for.*

The Working Group adopted the following consensus recommendations:

- 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.*

- Preneed contracts funded by a life insurance policy should include:

- Terms for cancellation by the purchaser or seller;
- Notice that cancellation of the preneed contract will not cancel the life insurance policy funding the preneed contract.
- Notice that insurance cancellation must be made in writing to the insurer.
- 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;
- Notice that the purchaser has the right to reassign the right to receive policy benefits to another funeral home contingent upon performance. (Homesteaders comment: Since the assignee stands before the beneficiary in claiming rights under the insurance policy, based on the assignee's performance, there is no reason the designate the provider or seller as beneficiary under the policy.)

Deleted: /transfer the beneficiary designation or assignment

! ***Comments:*** *To avoid confusion and potential misconstructions, concerns were raised that the majority of this information should be provided by the insurer and included in the insurance contract since it would require the seller to summarize the insurance contract. Additionally, Homesteaders suggested use of the National Association of Insurance Commissioner's model for insurance funded disclosures. Funeral Consumer Alliance also suggested that the amount of commission should also be disclosed in an insurance-funded contract.*

! ***Comments:*** *Funeral Consumer Alliance suggested that licensees should disclose to the purchaser if the licensee is an insurance agent/producer and if the licensee will receive any commission, payment or other consideration for the sale of an insurance product.*

(Homesteaders comment: The Model preneed disclosure regulations adopted by the National Association of Insurance Commissioners (NAIC) and many of the states provides for a disclosure of the fact that a commission is paid but it does not require the disclosure of the amount of that commission since the amount is often not know at the point of sale.)

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JOINT ACCOUNT-FUNDED PRENEED CONTRACTS

The Working Group unanimously recommended that the current provisions for joint-account funded preneed plans are adequate and should be maintained. However, the Working Group suggested the following minor changes:

- 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.

- Sellers only utilizing joint-account funded preneed contracts should not be required to have a trust.

PAYMENTS TO PROVIDERS

The Working Group unanimously recommended the following:

- To request payment, providers should be required to submit a certificate of performance certifying that the provider has rendered services to the preneed beneficiary. The certificate of performance should be signed by the provider and the person authorized to make arrangements on behalf of the preneed beneficiary.

- Sellers should remit payment to providers within thirty (30) days after receiving a certificate of performance. (Homesteaders comment: This should apply only to contracts funded by trust or joint-accounts, not contracts funded by life insurance, since in the later insurers will pay direct to providers and not through sellers.) Sellers should not be prohibited from also requiring submission of a death certificate or other documentation sufficient to meet the insurer's requirements for proof of death. (Homesteaders comments: Certified death certificates are not required in the majority of jurisdictions due to the amount of time often required to obtain them. Most claims are paid following the submission of a copy of a death certificate, though not a certified copy, or other documentation of proof of death as required by insurance regulations.)

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CANCELLATION/PORTABILITY OF PRENEED CONTRACTS

The Working Group considered four distinct scenarios that generally arise over the life of a preneed contract:

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.

A. Contract Fulfillment:

The Working Group approved the following unanimous recommendations:

- On fulfillment, sellers/providers should be entitled to payment as provided in the contract and the related income or funding appreciation, on guaranteed preneed contracts. (Homesteaders comment: We should make the distinction on retaining income/appreciation that it may only be justified by the assumption of risk under the contract as determined by price guarantees?)

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B. Transfer of Providers:

The Working Group approved the following unanimous recommendations:

- Chapter 436 should allow for 100% portability. Purchasers should have complete and unrestricted freedom to select an alternative provider. Purchasers should not be penalized nor should any additional fee or costs be assessed to the purchasers for a transfer.

- The new provider designated by the purchaser should be accepted by the seller if the new provider agrees to accept the remaining payment owed 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 the seller should be able to reject a designated provider if the seller does not have a contract with the provider or if legitimate business reasons exist for the seller not accepting the designation (i.e.- the provider has failed to comply with the contract in other instances or has misappropriated funds from the seller).*

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. The refund amount should be designated by statute (however, see below).

Additional Recommendations: 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, the following recommendations were suggested by Working Group Participants:

- 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- 100% of all funds held in trust should be refunded.
- 80% of all funds held in trust should be refunded.
- 80% of all funds paid by the purchaser should be refunded.
- 80% of all funds paid should be refunded plus a portion of the income earned.

D. Cancellation By Seller For Non-Payment:

The Working Group approved the following unanimous recommendations:

- Sellers should be allowed to cancel the contract unilaterally if the purchaser is in default of payment.

- If cancelled by the seller, preneed purchasers should be refunded 80% of all amounts paid for the contract.

- Prior to cancellation, purchasers should be provided written notification from the seller of the seller's intent to cancel. The notice should be provided forty-five days prior to cancellation and should allow the purchaser thirty days to remit the payment in arrears to avoid cancellation.

- If the seller does not cancel 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, 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- Eighty percent of all funds paid and held in trust should be refunded to purchasers.

! ***Comments:*** *Bill Stalter recommended that issues regarding trust expenses and income/expense allocations would be better addressed in rulemaking.*

REPORTING REQUIREMENTS

To assist the Board in regulation, the Working Group unanimously recommended expanding the information submitted to the Board by preneed licensees.

ANNUAL REPORT
REQUIREMENTS FOR ALL PRENEED SELLERS

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

- The purchaser's name and address and preneed contract number, if any. Contract numbers should not be required but should be provided if available..
- The total number and face value of outstanding preneed contracts sold since the last report was filed.
- The contract amount for each preneed contract sold since the last annual report
- The name, address and contract number of all preneed agents authorized to sell preneed for the seller.
- The number of contracts fulfilled by the seller since the last report.
- The name and address of each provider contracted with the seller.
- The name and address of a custodian of preneed records.
- Authorization for the Board to conduct an audit and/or an examination of books and records.
- 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 unanimous recommendations: Annual reports filed with the Board by the seller should include:

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

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

ANNUAL REPORT REQUIREMENTS
FOR JOINT-ACCOUNT FUNDED PRENEED CONTRACT SELLERS

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

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

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

ANNUAL REPORT REQUIREMENTS FOR INSURER FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations:

- The name and address of each insurer issuing insurance to fund a preneed contract during the preceding year.
- The available death benefit of each policy in force at the time of the report.

(Homesteaders comment: The only pertinent status that needs to be reported is in-force. The cash surrender value under the policy is immaterial to the preneed transaction and of no interest to the Board.)

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- *(This should include a certification statement from the insurer that it is true and accurate.)(Homesteaders comment: We do not want to individually certify each report but can include a blanket statement on each report to that effect.)*

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CONSUMER REPORTING / NOTIFICATIONS

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The Working Group unanimously approved the following recommendations:

- 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.(Homesteaders comment: this should be required only for trustees or holders of joint-accounts, not for insurance policies or insurers governed by insurance requirements.)
- Sellers should inform purchasers of a change in trustee within thirty (30) days after the change. Notification should include the name, address and phone number of the trustee.

The Working Group approved the following majority recommendations:

- Purchasers should be notified by the trustee each time a deposit is made into trust for the contract.

> ! *Comments: Participants expressed concerns that an annual report would create an unnecessary burden on preneed sellers and increase administrative expenses that would eventually be passed on to the consumer.*

- Purchasers should be provided a receipt for each payment made by or on behalf of the purchaser. The receipt should be provided by the initial person receiving the payment (i.e.- the seller, provider or the agent). (Homesteaders comment: this should be required only for trustees or holders of joint-accounts, not for insurance policies or insurers governed by insurance requirements.)

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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 unanimously recommended the following:

PRENEED SELLERS:

- The Working Group approved the following unanimous 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.
  - Notice to consumers that the seller will cease doing business and indicate a contact number for questions regarding preneed contracts, consumer refunds or how arrangements will be satisfied. Purchaser 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 preneed provider/seller to ensure contractual obligations are met.
- The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any preneed seller who ceases business without notification to the Board.

PRENEED PROVIDERS:

- 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 transferring/disposing of a majority of stock/assets.
  - Upon notification from the providers, sellers should be required to notify all purchasers that the provider has ceased doing business or has transferred ownership. Notification should include provisions for

selecting an alternative provider and should be provided within thirty (30) days after the provider ceasing business or transferring ownership/assets.
    - 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 be granted 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 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 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 selling joint-account funded plans only 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.
- Books and records of licensees should be made available to the Board by the licensees upon request.
- Costs of an inspection, investigation, examination or audit should be funded through licensing fees 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.

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 person061 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.
  - 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 any such action should be amended to 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. Additionally remedies should include 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 found.
- Fines/civil penalties 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 the 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

(7) Any person with a filed Notice of Intent shall be authorized to engage in the practice of preneed selling, providing or as a sales agent, as so indicated on the Notice of Intent, provided that the Applicant has timely filed his/her Application for Licensure and/or Registration. This authorization to practice shall be effective from the date the Board receives the Notice of Intent and shall end on the date the Board either issues a license or registration or denies the application for licensure/registration or until midnight on December 31, 2009, whichever comes first. The Board shall promptly notify the Applicant of its decision to issue a license/registration or its denial of same.

(8) Any conduct that may be cause for discipline that occurs between August 28, 2009 and December 31, 2009 shall be considered by the Board in its decision to issue or deny any Application for licensure and/or registration. In addition, if the Board issues a license or registration and later discovers conduct that would be cause for discipline occurred between August 28, 2009 and December 31, 2009, the Board shall have authority to seek discipline against the licensee or registree for that conduct as if the person were fully licensed or registered while operating under the authority of the Notice of Intent.

Authority: 333.011, 333.315, 333.320, 333.325 and 333.340

Proposed Emergency Rule Regarding Filing of Annual Reports

Title: Filing of Annual Reports

Purpose: This emergency rule prescribes the Board's process for the filing of annual reports under the revised sections of Chapters 333 and 436.

For reporting year ending October 31, 2009, preneed sellers who were registered with the Board prior to August 28, 2009, may file an annual report as set forth in Section 436.021.2(3), RSMo (2000) to meet the annual report requirement of Section 436.460, RSMo, Supp. 2009.

Authority: 333.340 and 436.460

August 5

Public Comments

Amy Battagler email August 5 2009 comments

From: Battagler, Amy
Sent: Tue 8/4/2009 5:37 PM
To: Dunn, Becky
Subject: Comments to the board

Becky, I have attached some comments for the board. I will not make the meeting tomorrow but will have representation there on the 11th.

I wanted also to comment on the information emailed out yesterday.
In the attachment SB1 Implementation Group I:
Notice of Intent to Apply - it looks as if the need for the fee is required on this, although the rule states that a fee does not have to be submitted with it.
Also, in the rule, it doesn't state anywhere the time frame that the PN agents will have to pass an exam set by the board. It only addresses the notice of intent and the formal application.

Comment K2: Is there a reason that a corporation cannot represent themselves? I don't see the need for an attorney in every case when the corporation is a small one.

Comment K6: To remind you of the definition of a "Person" - any individual, partnership, corporation, cooperative, association, or other entity. It is any or all of these that can be licensed as a provider. The statute requires that a provider be authorized and registered to conduct business in the state. You would be requiring all licensed funeral directors to have to form their own business entity. Most funeral directors work for a business that is licensed or registered to do business in the state, and it is the business (funeral establishment) who handles the books and records, not the individual funeral director who acts on behalf of the provider. It is the responsibility of the provider, not the funeral director, to handle annual reporting, bookkeeping, files, etc. The funeral director may be employed by one establishment and then move to another but the contracts, books, reporting, etc. stays with the responsibility of the provider. Also, contracts may be signed by a funeral director and a purchaser, but the funeral director is acting on behalf of the provider and the contract is between the provider (registered business) and the purchaser.

Comment K17: The reference in Ch. 333 and 436 to exempt cemeteries does not quite exclude cemeteries clearly. A rule should be made to include cemetery merchandise as defined in ch. 214 as part of the exemption.

Comment K41: Are you going to require licensed insurance sellers to be registered agents to be able to sell trusts?
How much time are you going to give PN agents to take the exam?

Comment K48: 333.325.1 specifically states that a licensed funeral director does not have to register as a PN agent.

Comment K60: Requiring an attorney is extremely expensive for any corporation. Can a corporation choose someone to represent them without it being required that it is an attorney?

Thank you.

Amy Battagler
Stewart Enterprises
Compliance & Safety, WD-Central

August 5

Public Comments

Amy Battagler Stewart Enterprise Comments 8-5-09

Stewart Enterprises, Inc.
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Amy Battagler
Director of Compliance and Safety
Western Division

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816-719-0253

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August 4, 2009

Becky, here are some comments for upcoming meetings. Sorry for the late notice.

436.430.2 - the requirement to deposit "all payments received". Not only would there be a concern regarding finance charges being included in some of these payments but also administrative fees or the state preneed contract fee. The rule needs to clearly specify that excluded from trusting would be collection of any late fees, finance charges, administrative fees, etc.

436.425.1(12) – include the name and signature of the purchaser, the provider or its authorized representative, the preneed agent responsible for the sale of the contract, and the seller or its authorized representative. Requiring both the provider and the seller's signatures for each contract is difficult. The seller and provider already will have a contract/agreement between them but now they require both the seller and provider's signatures on every contract. It can't be done at the time the contract is written *especially* when the contract is written at the home of the family. Also, if a 3rd party seller is signing a contract with a purchaser, who, of the provider's location, would be responsible for signing such contract?

Section 436.430.11 requires that a certificate of performance be provided to the seller, signed by both the provider and the individual who made the arrangements for the beneficiary. Is this a separate certificate of performance or would the signing of the at-need contract suffice since such contract would be signed by both parties and in such contract they agree to deliver the merchandise and services for the beneficiary?

Section 436.430.3 states that the seller may request the distribution of an amount up to the first five percent of the total amount of the contract at any time AFTER five percent has been deposited. Considering that this is an origination fee, it would make more sense to be able to request the money that has been deposited into trust until an amount not to exceed 5% has been withdrawn for an origination fee. This would address situations where, for example, a contract is signed but the customer only pays three percent and then stops making payments. The seller has already incurred certain administrative expenses (commission to the counselor, booking the contract, funding 100% of such amount received, etc.) for which he should be entitled to the origination fee. Based on the current language, he would not be able to withdraw anything because the five percent has not been reached. This language would also be consistent with article 436.430.4.

Section 436.435.1 – it is unclear what provisions of the law should be made into compliance no later than July 1, 2010. The only section that appears should remain intact would be

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Amy Battagler
Director of Compliance and Safety
Western Division

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436.031 as it relates to disbursements to the seller from the trust and payment of trust expenses based on the exclusion language of 436.412, but the rules should clarify this.

436.458 - Once a customer selects a different provider from the one selected on the original contract, the seller has the option to either establish a trust where the new provider receives credit for all principal or pay principal and income to the new provider? Please clarify who is entitled to the income under the first scenario. Also, subsection 2 states that "seller shall pay... all payments owed to the original provider under the contract" so please clarify that as much as 15% can be retained by the original provider based on section 436.430.

Sincerely,

Amy Battagler

August 5

Public Comments

Bill Stalter comments for August 5 2009 meeting

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

CHAPTER 436 WORKING GROUP RECOMMENDATIONS

Submitted: September 1, 2008

September 1, 2008

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. While 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.

The State Board of Embalmers and Funeral Directors (the "Board"), under the auspices of the Missouri Division of Professional Registration (the "Division"), regulates embalmers, funeral directors, funeral establishments, preneed sellers and preneed providers licensed in this state. 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.

Senate Bill 780, enacted by the General Assembly 2008, which created the Joint Committee on Preneed Funeral Contracts. 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 a diverse representation from all aspects of the preneed industry, including, liaisons from various consumer groups, 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 diverse interests were represented, 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

OVERVIEW

I. GENERAL OVERVIEW:

During the 2008-2009 legislative session, various Chapter 436 proposals were introduced. Although not enacted, the proposals sparked intense discussion among regulators, consumers and professional groups. While a consensus was not reached, industry and regulatory groups were able to identify several common areas of agreement.

At the close of the legislative session, various representatives met with Senator Delbert Scott and Representative Jay Wasson to discuss Chapter 436 concerns. The Board was subsequently asked to formulate a working group to help identify agreed areas for legislative recommendations.

The Board hosted five (5) open meetings for the Working Group in Jefferson City, Missouri.[1] All meetings of the Working Group were conducted as open meetings in accordance with Chapter 610, RSMo. Notice of meetings and the proposed agenda were made available to the public and published on the Board's website.

II. PARTICIPANTS:

The Working Group consisted of representatives from consumer groups, funeral directors, preneed providers, preneed sellers, third-party preneed sellers, 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

[1] Open meetings were hosted on July 8th, July 15th, July 24th, July 29th and August 12th.
* Did not participate as a voting member of the Working Group.

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
George Kutis/ George Kline	Kutis Funeral Home, Inc.
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/ Jo Walker	Silver Haired Legislators
Don Otto	Executive Director, Missouri Funeral Director and Embalmers Association/Missouri Funeral Trust
Mark Warren	Inglish & Monaco- Representing a coalition of 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

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COMMITTEE SUPPORT STAFF:

Connie Clarkston	Director of Budget & Legislation, Division of Professional Registration
Becky Dunn	Executive Director, State Board*
Jeana 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 circulated a survey with a listing by topic area of Chapter 436 proposals submitted to the Board in prior years. Participants were asked to rank

the priority of topic areas listed for purposes of discussion. Surveys were made publicly available and were posted on the Board's website. The Division subsequently compiled the rankings and utilized results to structure the Working Group. [See Appendix 1- Bd. Survey].

The surveyed topics were ranked as follows:

[INCLUDE SURVEY RESULTS HERE]

RECOMMENDATIONS

Working Group recommendations have been compiled 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.

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

I. General Regulatory Authority 10

II. Definitions 11-12

III. Licensing/Registration 13

IV. Preneed Contracts 14-15

V. Preneed Providers 16

VI. Trust-Funded Preneed Plans 18-19

VII. Regulation of Trusts & Trustees 20-23

VIII. Insurance-Funded Preneed Plans 24-25

IX. Joint Account-Funded Preneed Contracts 26

X. Payments to Providers 27

XI. Cancellation/Portability of Preneed Contracts 28-30

XII. Reporting Requirements 31-32

XIII. Consumer Reporting/Notifications 33

XIV. Termination of Business 34-35

XV. Audits, Investigations and Examinations 36-37

XVI. Disciplinary Authority 38-40

XVII. Enforcement Authority 41-42

XVIII. Fees 43

XIX. Conclusion 45

GENERAL REGULATORY AUTHORITY

The Working Group unanimously agreed to the following recommendations:

- Regulatory authority over Chapter 436 and preneed licensing should remain with the Board. Regulatory authority should not be transferred to another agency.

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

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

- The Board should be granted general rulemaking authority to administer Chapter 436 and to establish necessary fees.

> ! *Comments: Funeral Consumer Alliance suggested that the current licensee confidentiality restrictions should be revised to allow the 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 specific to the Board.*

- The Board should be authorized to hire legal counsel to assist in the enforcement of Chapter 436.

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

DEFINITIONS

Several of Chapter 436's current definitions are insufficiently defined. Accordingly, the Working Group approved the following unanimous recommendations:

- *"Funeral Beneficiary (Funeral Recipient also acceptable)"*, 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. (Homesteaders comment: The use of the term "beneficiary" here has a high potential for confusion with the insurance term "beneficiary". Thus, the term "Funeral Recipient" is preferable.

- *"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 space, grave markers, monuments, tombstones, crypts, niches or mausoleums.

- *"Guaranteed Contract"*, A preneed contract in which the future costs for the disposition, facilities, services or merchandise identified in the preneed contract are definitively designated and guaranteed in the contract. A guaranteed contract may contain some non-guaranteed items as well as limitations on guarantees, however, these must be disclosed within the contract.)

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- *"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 costs for the disposition, facilities, services or merchandise are not guaranteed in the contract.

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- *"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. Homesteaders comment: If burial associations or other entities are to be given unique considerations under the contract, these considerations should not be included in the definition of preneed contract. Their obligations should be the same under the prenced contract, though they may stem from a membership for which a fee is charged.

Deleted: , 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

- *"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, as grantor, 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. (Homesteaders comment: The seller may not need to remit payment to the provider, for example, when the insurance funding is paid directly to the provider.)

Deleted: 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.

LICENSING / REGISTRATION

The Working Group agreed to the following consensus recommendations:

- A "license" should be required for all preneed providers/sellers. Currently, sellers and providers are "registered" with the Board. A "license" denotes legal obligations and more accurately reflect the authorization being issued by the Board.

- Individuals selling preneed for or on behalf of a preneed seller should be licensed by the Board as a preneed agent. As a condition of licensure, preneed agents should successfully pass the Missouri law examination currently offered by the Board, provided that Missouri licensed funeral directors should not be required to take an additional examination.

> ! *Comments: John McCulloch (APS) expressed concerns imposing full licensing, testing or disciplinary requirements on preneed agents.*

- To be eligible for licensure/renewal, preneed agents, providers and 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.

- All preneed sellers or providers operating as business entities must be properly registered with the Missouri Secretary of State and authorized to conduct business in the state.

- Chapter 436 should be clarified to exempt endowed care cemetery operators governed by Chapter 214 from the provisions of Chapter 436. However, cemetery operators should be subject to Chapter 436 if the contract includes services that may only be lawfully provided by a licensed funeral director or embalmer.

- 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.

- Due to potential costs, preneed licensees should not be required to obtain bonding or any specific insurance. The Working Group suggested that increasing consumer protections and regulatory oversight would adequately address the need for additional insurance/bonding.

PRENEED CONTRACTS

The Working Group unanimously approved the following recommendations:

- 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 concerns relate to each different type of funding. Chapter 436 could be more effectively regulated if the provisions were modified to accommodate each specific form of funding.

- While minimum preneed contract requirements should be established, as provided below, a standard preneed contract form should not be required.

> ! *Comments: Although MFDEA supported the vote, representatives stressed that a standard form could be beneficial.*

- Preneed sellers should be required to maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) 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.

> ! *Comments: Funeral Consumer Alliance recommended that sellers should also provide copies of all preneed contracts to the Board. The Board suggested this requirement may be unduly burdensome and that requiring sellers to providing copies upon request would satisfy regulatory concerns.*

- Preneed contracts should only be designated as irrevocable if the contract is being used to qualify for Medicaid or other public assistance programs (i.e.-for "spend down").

Deleted: contracts

- Preneed contracts should be in writing and should clearly and conspicuously:
  - Include the name, address and phone number of the purchaser, beneficiary, provider and the seller;
  - Detail the disposition or facilities, services or merchandise requested;
  - Clearly 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 type).
  - Identify terms for cancelling the contract by the purchaser or by the seller for payment default.
  - Identify the funding mechanism including, the trust or financial institution where preneed funds will be held or the insurance company issuing an insurance policy.
  - Identify expenses to be retained by the seller.

- Be signed by the purchaser, and the seller which will be obligated to perform under the contract or the seller's representative. (Homesteaders comment: Limit the required signatures to those who are present at the time of contracting.)

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- Preneed contracts not in compliance with Chapter 436 should be rendered void [should this be voidable by the purchaser] (Homesteaders comment: Yes, this should be voidable at the purchaser's option) and unenforceable. If not in compliance, payments may be recoverable by the purchaser or their legal representative plus attorney fees.

> ! *Comments: This requirement is similar to current law.*

- 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: The Funeral Consumer 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).*

- 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.

The Working Group approved the following consensus recommendations:

- Preneed contracts should clearly designate whether the contract is revocable or irrevocable.

> ! *Comments: Homesteaders Life 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.*

Deleted: Insurance

> ! *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. Representatives of AARP, the Silver Haired Legislators and the Funeral Consumer Alliance agreed with this suggestion.*

PRENEED PROVIDERS

The Working Group unanimously approved the following recommendations:

- In light of recent concerns raised by the Federal Trade Commission, preneed provider licensing should not be restricted to only funeral establishments or cemetery operators. Private individuals are currently authorized to sell funeral merchandise preneed or at-need. However, it should be clarified that Chapter 436 does not exempt any person from the licensing requirements of Chapter 333 governing funeral directors and establishment.

- 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.

- 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.

- Providers should be required to report the name and address of its custodian of records and of all sellers authorized to name the licensee as a provider. The Board should be notified by the provider in writing within 15 days of any amendments or changes.

PRENEED SELLERS

The Working Group adopted the following unanimous recommendations:

- For purposes of licensure, Chapter 436 should be clarified to provide that a preneed trust is not required if the seller is only selling joint-account or insurance-funded preneed plans.

- Preneed sellers should have the option to sell either trust-funded, joint-account funded or an insurance-funded preneed contract. (Homesteaders comment: It this notification in itself helpful to the Board? This could be determined by the annual report if properly constructed.)

Deleted: Sellers should notify the Board of the type of contracts to be sold.

- 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. The Board should be notified by the seller in writing of any amendments or changes.

- 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 any preneed fund payments received by the provider on trust or joint-account funded contracts.
  - Consent that all insurance premiums must be paid directly to the insurer by the consumer without the involvement of the seller or provider.

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- Sellers should maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided.

333.221. Board compensation and employees

1. Each member of the board shall receive as compensation an
2 amount set by the board not to exceed fifty dollars for each day devoted to the
3 affairs of the board, and shall be entitled to reimbursement of his expenses
4 necessarily incurred in the discharge of his official duties.

5 2. The board may employ such board personnel, as defined in subdivision
6 (4) of subsection [10] 11 of section 324.001, RSMo, **including legal counsel**, as
7 is necessary for the administration of this chapter.

Comment [K15]: May not need to do any rules, but might consider:
-define qualifications for legal counsel and/or terms of employment (Mo license, good standing, at will, etc.)

Related regs:
20 SCR 2120-1.020, (p. 22, board booklet)
20 CSR 2120-1.010, (p. 21, board booklet)

333.251. Retail exception

Nothing in this chapter shall apply to nor in any manner
2 interfere with the duties of any officer of local or state institutions, nor shall this
3 chapter apply to any person engaged simply in the furnishing of burial
4 receptacles for the dead[, but shall only apply to persons engaged in the business
5 of embalming or funeral directing] at the time of need.

Comment [K16]: May want to spell out that casket stores are ok and define them.
May also need to spell out that a preneed license is needed to do preneed.
These are covered in statute but would it be useful for industry to have explicit in rule? Or would that confuse things?

333.310. Cemetery exception

The provisions of sections 333.310 to 333.340 shall not
2 apply to a cemetery operator who sells contracts or arrangements for
3 services for which payments received by, or on behalf of, the purchaser
4 are required to be placed in an endowed care fund or for which a
5 deposit into a segregated account is required under chapter 214, RSMo;
6 provided that a cemetery operator shall comply with sections 333.310
7 to 333.340 if the contract or arrangement sold by the operator includes
8 services that may only be provided by a licensed funeral director or
9 embalmer.

Comment [K17]: This exempts cemeteries to the extent they fall under endowed care in chp. 214. Need to look at current 214 (as proposed changes to 214 last legislative session did not pass into law) and see if any rules needed. May consider setting out in rule that to the extent not exempt under this section, then you fall within chps 333/436. Goal toward defining when exempt and when not.

Comment [K18]: How does cemetery statute impact the board?

333.315. Provider license requirements

1. No person shall be designated as a provider, or agree
2 to perform the obligations of a provider under a preneed contract
3 unless, at the time of such agreement or designation, such person is
4 licensed as a preneed provider by the board. Nothing in this section
5 shall exempt any person from meeting the licensure requirements for
6 a funeral establishment as provided in this chapter.

7 2. An applicant for a preneed provider license shall:

8 (1) File an application on a form established by the board and
9 pay an application fee in an amount established by the board by rule;

10 (2) Be authorized and registered with the Missouri secretary of
11 state to conduct business in Missouri;

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

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

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

23 (6) If the applicant is a corporation, each officer, director,
24 manager, or controlling shareholder shall be eligible for licensure if
25 they were applying for licensure as an individual.

26 3. Each preneed provider shall apply to renew his or her license
27 on or before October thirty-first of each year or a date established by
28 the division of professional registration pursuant to section 324.001,
29 RSMo. A license which has not been renewed prior to the renewal date
30 shall expire. Applicants for renewal shall:

31 (1) File an application for renewal on a form established by the
32 board by rule;

33 (2) Pay a renewal fee in an amount established by the board by

Comment [K19]: To be designated as provider, must be licensed. Need to address time period between 08/28/09 and when permanent rules are in place addressing procedure, forms, etc.

One way to do this could be:
For those currently registered:
-Given automatic temporary permit to operate that would be valid until some date, e.g., 10/31/09
-This could follow receipt of a notice of intent to obtain license
-Permit could be an actual paper permit issued or simply a declaration in the rule
-Have to apply for a license by a set date, e.g., 10/31/09
-Have to file annual report (according to requirements of old law) – for this year's reporting requirement only
-If license application timely received, temporary permit would continue to be valid until board acts on license application

For those not currently registered:
-Need to apply/send letter/contact board as directed by rule
-Would be given temporary permit to operate similar to the above
-Would need to submit a complete application for initial licensure by a certain date, e.g., 10/31/09
-Could be required to provide a type of annual report as part of application process
-If application timely received, temporary permit would continue as valid until board acted on license application

There are many ways to set out this process

Comment [K20]: Need a form

Comment [K21]: Need to set a fee

Comment [K22]: Need to address filing process and language for written consent. Maybe develop a form.

Comment [K23]: May want to clarify what this means/includes?

Comment [K24]: Need to address time period of 08/28/09 to 10/31/09 (and then annually thereafter). If anyone gets a license prior to 10/31/09, should address whether has to renew by 10/31/09. May not have to worry about registrations expiring under this section as it says "license".

Comment [K25]: Need rule for renewal process and need to develop a form

Comment [K26]: Need rule establishing renewal fee

34 rule, however no renewal fee shall be required for any funeral
35 establishment whose Missouri license is current and active;

36 (3) Be authorized and registered with the Missouri secretary of
37 state to conduct business in Missouri;

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

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

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

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

49 (d) Any information required by any other applicable statute or
50 regulation enacted pursuant to state or federal law.

51 4. A license which has not been renewed as provided by this
52 section shall expire. A licensee who fails to apply for renewal may
53 apply for reinstatement within two years of the renewal date by
54 satisfying the requirements of subsection 3 of this section and paying
55 a delinquent fee as established by the board by rule.

Comment [K27]: May want to clarify what this means?

Comment [K28]: May want to set out requirements for annual report in rule – when due, explaining items required by statute, etc. Will want a renewal form.

Comment [K29]: Need to set fee, create form to notify, develop process regarding delinquent fees, address what happens if doesn't renew and their license becomes void and whether then have to start application process over

Comment [K30]: Additional things to consider:
-What if provider under contract is no longer licensed at time of need?
-Can we do a joint provider-funeral director-embalmer renewal?
-Duty to update board of any changes within 30 days
-New license with changes of owner – mirror funeral director-embalmer rule?
-On (6), limit to immediate contact if a large corp? (i.e., issues re: background checks, etc.)
-Funeral director is responsible for provider compliance?
-Set fees
-Address that establishment license is exempt from provider fee but not from application and meeting requirements?
-Need to modify establishment application?
-Need to have separate provider application?
-As setting out process, need to consider promo/computer licensing system capabilities

333.320. Seller license requirements

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

Comment [K31]: Same as for provider above.

7 2. An applicant for a preneed seller license shall:

8 (1) File an application on a form established by the board and
9 pay an application fee in an amount established by the board by rule;

Comment [K32]: Need a form

10 (2) Be an individual resident of Missouri who is eighteen years
11 of age or older, or a business entity registered with the Missouri
12 secretary of state to transact business in Missouri;

Comment [K33]: What type of proof will be required to show age

13 (3) If the applicant is a corporation, each officer, director,
14 manager, or controlling shareholder, shall be eligible for licensure if
15 they were applying for licensure as an individual;

16 (4) Meet all requirements for licensure;

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

20 (6) Identify the name and address of each licensed provider that
21 has authorized the seller to designate such person as a provider under
22 a preneed contract;

23 (7) Have established, as grantor, a preneed trust or an agreement
24 to utilize a preneed trust with terms consistent with sections 436.400 to
25 436.520, RSMo. A trust shall not be required if the applicant certifies
26 to the board that the seller will only sell insurance funded or joint
27 account funded preneed contracts;

Comment [K34]: What will this certification be? Draft language or a form?

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

31 (9) File with the board, a written consent authorizing the state
32 board to inspect or order an investigation, examination, or audit of the

Comment [K35]: May want to set forth acceptable wording to be included within any such consent or just develop a written consent form to be used.

33 seller's books and records which contain information concerning
34 preneed contracts sold by or on behalf of the seller.

35 3. Each seller shall apply to renew his or her license on or before
36 October thirty-first of each year or a date established by the division
37 of professional registration pursuant to section 324.001, RSMo. A
38 license which has not been renewed prior to the renewal date shall
39 expire. Applicants for renewal shall:

40 (1) File an application for renewal on a form established by the
41 board by rule;

42 (2) Pay a renewal fee in an amount established by the board by
43 rule; and

44 (3) File annually with the board, a signed and notarized annual
45 report as required by section 436.460, RSMo.

46 4. Any license which has not been renewed as provided by this
47 section shall expire. A licensee who fails to apply for renewal within
48 two years of the renewal date may apply for reinstatement by satisfying
49 the requirements of subsection 3 of this section and paying a
50 delinquent fee as established by the board by rule.

Comment [K36]: Same as for provider above. Are renewals required each year or does "a date established by the division" provide authority to require biennial renewals (once / 2 years)? Should the date be changed? If so, how to do this through the division?

Comment [K37]: Need a form. Will likely need a rule for renewal process.

Comment [K38]: Need to set fee.

Comment [K39]: Additional consideration:
-What if seller is not licensed at time of need?
-Consider subcategories of sellers (e.g., 3rd party only, joint account only, insurance company, etc.)
-Limit to those involved if a large corp.?
-Require new license if change of owner (no transfer of license)?
-Set out that seller is the one responsible for the money?
-Comments regarding provider licensure may apply here too
-If fail to renew and 2 years pass and becomes void, have to reinitiate application process?

333.325. Agent registration

1. No person shall sell, negotiate, or solicit the sale of
2 preneed contracts for, or on behalf of, a seller unless registered with
3 the board as a preneed agent except for individuals who are licensed
4 as funeral directors under this chapter. The board shall maintain a
5 registry of all preneed agents registered with the board. The registry
6 shall be deemed an open record and made available on the board's web
7 site.

8 2. An applicant for a preneed agent registration shall be an
9 individual who shall:

10 (1) File an application on a form established by the board and
11 pay an application fee in an amount established by the board by rule
12 which shall not exceed fifty percent of the application fee established
13 by the board under this chapter for a funeral director license;

14 (2) Be eighteen years of age or older;

15 (3) Be otherwise eligible for registration under section 333.330;

16 (4) Have successfully passed the Missouri law examination as
17 designated by the board;

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

21 3. Each preneed agent shall apply to renew his or her
22 registration on or before October thirty-first of each year or a date
23 established by the division of professional registration pursuant to
24 section 324.001, RSMo. A registration which has not been renewed
25 prior to the renewal date shall expire. Applicants for renewal shall:

26 (1) File an application for renewal on a form established by the
27 board by rule;

28 (2) Pay a renewal fee in an amount established by the board by
29 rule which shall not exceed fifty percent of the application fee
30 established by the board under this chapter for a funeral director
31 license renewal; and

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

Comment [K40]: As defined includes corporation

Comment [K41]: Same as for provider and seller above, except is registration (instead of licensure).

Comment [K42]: Note that applicant here is an individual and not a "person" where "person" under these sections includes a corporation

Comment [K43]: Need an application form.
Require notification of any change in info to board within 30 days of change?

Comment [K44]: Need to set fee

Comment [K45]: What proof of age required to be provided?

Comment [K46]: Set out that can only sell if for a licensed seller?

Comment [K47]: Coordinate to be at same time as funeral director/embalmer renewals?

Comment [K48]: Set out whether a licensed funeral director has to also be a registered preneed agent to sell?
And if so, whether same timeframes for funeral directors registering as preneed agents as for others?

Comment [K49]: Need a form. Will likely need a rule setting out renewal application process

Comment [K50]: Need to set fee

Comment [K51]: Set out that all providers named must be licensed providers?
-Licensed as of date of preneed contract and date of contract between agent and seller
-Develop a form?

35 4. Any funeral director acting as a preneed agent shall be
36 required to report the name and address of each preneed seller for
37 whom the funeral director is authorized to sell, negotiate, or solicit the
38 sale of preneed contracts as part of their biennial renewal form. Each
39 funeral director preneed agent shall be included on the board's
40 registry.

41 5. Any registration which has not been renewed as provided by
42 this section shall expire and the registrant shall be immediately
43 removed from the preneed agent registry by the board. A registrant
44 who fails to apply for renewal may apply for reinstatement within two
45 years of the renewal date by satisfying the requirements of subsection
46 3 of this section and paying a delinquent fee as established by the
47 board.

Comment [K52]: Does funeral director application need to be modified to include the seller relationship information? Same with regard to preneed agent, funeral director? Do funeral directors selling preneed out of their funeral homes have the same reporting requirements as preneed agents?

Comment [K53]: Need to set fee

Comment [K54]: Will need rules to address agent registrations temporarily also (like sellers and providers above) – from 08/28/09 until license application can be granted/denied by the board. Will also need to consider requirement to take Mo law exam in timeframes.

333.330. Authority to deny/discipline

1. The board may refuse to issue any certificate of
2 registration or authority, permit, or license required under this chapter
3 for one or any combination of causes stated in subsection 2 of this
4 section. The board shall notify the applicant in writing of the reasons
5 for the refusal and shall advise the applicant of his or her right to file
6 a complaint with the administrative hearing commission as provided
7 by chapter 621, RSMo.

Comment [K55]: May not need any emergency rules for this, or any rules at all. Could consider rules regarding notice

8 2. The board may cause a complaint to be filed with the
9 administrative hearing commission as provided by chapter 621, RSMo,
10 against any holder of any certificate of registration or authority,
11 permit, or license required by chapter 333, RSMo, or any person who
12 has failed to renew or has surrendered his or her certificate of
13 registration or authority, permit, or license for any one or any
14 combination of the following causes:

15 (1) Use of any controlled substance, as defined in chapter 195,
16 RSMo, or alcoholic beverage to an extent that such use impairs a
17 person's ability to perform the work of any profession licensed or
18 regulated by this chapter;

Comment [K56]: Set out that a DWI qualifies for discipline under this section?

19 (2) The person has been finally adjudicated and found guilty, or
20 entered a plea of guilty or nolo contendere, in a criminal prosecution
21 under the laws of any state or of the United States, for any offense
22 reasonably related to the qualifications, functions, or duties of any
23 profession licensed or regulated under this chapter, for any offense
24 involving a controlled substance, or for any offense an essential
25 element of which is fraud, dishonesty, or an act of violence;

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

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

32 (5) Incompetency, misconduct, gross negligence, fraud,
33 misrepresentation, or dishonesty in the performance of the functions
34 or duties of any profession licensed or regulated by this chapter;

35 (6) Violation of, or assisting or enabling any person to violate,
36 any provision of this chapter, or of any lawful rule or regulation

37 adopted pursuant thereto;

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

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

46 (9) A person is finally adjudged mentally incompetent by a court
47 of competent jurisdiction;

48 (10) Misappropriation or theft of preneed funds;

49 (11) Assisting or enabling any person to practice or offer to
50 practice any profession licensed or regulated by this chapter regulating
51 preneed who is not licensed or registered and currently eligible to
52 practice thereunder;

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

55 (13) Failure to display a valid certificate or license if so required
56 by this chapter regulating preneed or any rule established thereunder;

Comment [K57]: Set out requirements for display (under respective sections of SB1)

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

58 (15) Making or filing any report required by sections 436.400 to
59 436.520, RSMo, regulating preneed which the licensee knows to be false
60 or knowingly failing to make or file a report required by such sections;

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

64 (17) Willfully and through undue influence selling a funeral;

65 (18) Willfully and through undue influence selling a preneed
66 contract;

67 (19) Violation of any of the provisions of chapter 193, 194, 407, or
68 436, RSMo;

69 (20) Presigning a death certificate or signing a death certificate
70 on a body not yet embalmed by, or under the personal supervision of,
71 the licensee;

72 (21) Failure to execute and sign the death certificate on a body
73 embalmed by, or under the personal supervision of, a licensee;

74 (22) Failure to refuse to properly guard against contagious,
75 infectious, or communicable diseases or the spread thereof;

76 (23) Refusing to surrender a dead human body upon request by
77 the next of kin, legal representative, or other person entitled to the
78 custody and control of the body.

79 3. After the filing of such complaint, the proceedings shall be
80 conducted in accordance with the provisions of chapter 621,
81 RSMo. Upon a finding by the administrative hearing commission that
82 the grounds, provided in subsection 2 of this section, for disciplinary
83 action are met, the board may, singly or in combination, censure or
84 place the person named in the complaint on probation on such terms
85 and conditions as the board deems appropriate for a period not to
86 exceed five years, or may suspend, for a period not to exceed three
87 years, or revoke any certificate of registration or authority, permit, or
88 license issued under this chapter.

89 4. In addition to all other powers and authority granted by the
90 board, the board may seek an injunction, restraining order or other
91 order from the Circuit Court of Cole County to enjoin any seller from
92 engaging in preneed sales upon a showing by the board that the seller
93 has failed to make deposits into the preneed trust, has obtained funds
94 out of the trust to which the seller is not entitled or has exercised
95 influence or control over the trustee or has engaged in any other act
96 that has resulted in a shortage in any preneed trust or joint account
97 which exceeds twenty percent of the total amount required to be held
98 or deposited into the trust or joint account under the provisions of
99 sections 436.400 to 436.520, RSMo. In addition to the power to enjoin
100 for this conduct, the Circuit Court of Cole County shall also be entitled
101 to suspend or revoke the preneed seller's license and any other license
102 issued pursuant to chapter 333 RSMo, held by the seller.

103 5. An individual whose certificate of registration or authority,
104 permit, or license has been revoked shall wait three years from the date
105 of revocation to apply for any certificate of registration or authority,
106 permit, or license under this chapter, either as an individual or as a
107 manager, director, shareholder, or partner of any business entity. Any
108 certificate of registration or authority, permit, or license shall be

Comment [K58]: Need rules regarding doing this electronically?

Comment [K59]: Set out that this includes cremains?

Comment [K60]: Set out that a corporation or other such legal entity must be represented by an attorney?

Comment [K61]: Set out what constitutes "control" over trustee?

Comment [K62]: Address market fluctuations? Maybe under other areas of SB1

109 issued at the discretion of the board after compliance with all the
110 requirements of this chapter relative to the licensing or registration of
111 the applicant for the first time.

112 6. Use of the procedures set out in this section shall not preclude
113 the application of the provisions of subsection 2 of section 333.335.

Comment [K63]: Additional considerations:
-Set out that seller is responsible for its agents' actions?
-Set out what constitutes "control" over trust?
-Maybe address these under other areas of SB1

333.335. Injunctive authority

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

5 (1) Offering to engage or engaging in the performance of any acts
6 or practices for which a registration or authority, permit, or license is
7 required by sections 333.310 to 333.340, upon a showing that such acts
8 or practices were performed or offered to be performed without the
9 required registration or authority, permit, or license; or

10 (2) Engaging in any practice or business authorized by a
11 registration or authority, permit, or license issued under this chapter,
12 that is in violation of this chapter or sections 436.400 to 436.520, RSMo,
13 or upon a showing that the holder presents a substantial probability of
14 serious danger to the health, safety, or welfare of any resident of this
15 state or client or customer of the licensee or registrant; or

Comment [K64]: Set out whether this includes financial welfare($)?

16 (3) Engaging in any practice or business that presents a
17 substantial probability of serious danger to the solvency of any seller.
18 2. Any such action shall be commenced in the county in which
19 such conduct occurred or in the county in which the defendant resides
20 or, in the case of a firm or corporation, where the firm or corporation
21 maintains its principal office or in Cole County.

22 3. Any action brought under this section shall be in addition to
23 and not in lieu of any authority provided by this chapter, and may be
24 brought concurrently with other actions to enforce this chapter or
25 sections 436.400 to 436.520, RSMo.

333.340. Rulemaking authority

1. The board shall adopt and enforce rules for the
2 transaction of its business and for standards of service and practice to
3 be followed in the professions of embalming and funeral directing
4 deemed by it necessary for the public good and consistent with the laws
5 of this state. The board may also prescribe a standard of proficiency
6 as to the qualifications and fitness of those engaging in the practice of
7 embalming or funeral directing.

Comment [K65]: Need a rule, maybe an emergency one re: "standards of service and practice."

8 2. The board shall set the amount of the fees which this chapter
9 authorizes and requires by rules promulgated under section 536.021,
10 RSMo. The fees shall be set at a level to produce revenue which shall
11 not substantially exceed the cost and expense of administering this
12 chapter.

Comment [K66]: Need a rule, and an emergency rule until permanent rules can be implemented.

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

Comment [K67]: Need a rule, maybe an emergency one regarding "standards of service and practice." Regarding transaction of the board's business, that may overlap with other requirements to promulgate rules.

Comment [K68]: The National Funeral Directors' Association has a Code of Professional Conduct.

18 4. Any rule or portion of a rule, as that term is defined in section
19 536.010, RSMo, that is created under the authority delegated in this
20 section shall become effective only if it complies with and is subject to
21 all of the provisions of chapter 536, RSMo, and, if applicable, section
22 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
23 and if any of the powers vested with the general assembly pursuant to
24 chapter 536, RSMo, to review, to delay the effective date, or to
25 disapprove and annul a rule are subsequently held unconstitutional,
26 then the grant of rulemaking authority and any rule proposed or
27 adopted after August 28, 2009, shall be invalid and void.

Additional comments:

A. Projections of revenue produced from applications, renewals, etc., will be needed
   a. What about revenue for this year?
   b. Use to set fees

B. Design an optional preneed contract to use?

C. Set out in rule that insurance type companies that sell preneed are sellers under this legislation?

D. Create an overview of all the time related requirements (e.g., 10, 15, 20 and 30 day requirements) throughout the chapters?

E. Create an overview relating to pre and post 08/28/09 for requirements in chapters 333 and 436?

August 5

Board Meeting Addendum Working Documents

Draft - Emergency Rules re Notice of Intent and Report

Proposed Emergency Rule for Notice of Intent to Apply

Title: Filing of Notice of Intent to Apply

Purpose: This emergency rule describes the Board's procedure for filing a Notice of Intent to Apply for Licensure/Registration under the new requirements contained in Chapters 333 and 436 which will become effective on August 28, 2009 and the result of filing the Notice.

(1) Any person wishing to conduct business as a preneed seller or preneed provider or wishing to register as a preneed sales agent (the "Applicant") must fully complete and file with the State Board a "Notice of Intent to Apply for Licensure/Registration" ("Notice of Intent") prior to engaging in any conduct for which a preneed seller license, a preneed provider license or a preneed sales agent registration is required. The Board shall provide the Notice of Intent as a .pdf document on its website. No fee shall be required to accompany the Notice of Intent. Only the official Notice of Intent form shall be accepted by the Board.

(2) Applicants may file the Notice of Intent with the Board by hand delivery, by mail, by fax or by other electronic means such as e-mail. If the Notice of Intent is filed by fax or other electronic means, the Applicant shall also provide the original signed document to the Board by mail or other delivery method.

(3) All Applicants must meet the requirements for licensure as set forth in Chapter 333, RSMo, and must certify that, to the best of their knowledge, they are eligible for licensure/registration.

(4) If the Board determines that the Applicant lacks the statutory qualifications for licensure/registration, the Board may terminate the temporary authorization to practice under the Notice of Intent by notifying the Applicant in writing of the termination and the reason for the termination. An Applicant may apply for full licensure or registration even if the Board has terminated his/her authority to practice pursuant to the Notice of Intent.

(5) Any Applicant who has filed a Notice of Intent must file their completed Application for licensure or registration with the Board no later than October 1, 2009.

(6) The Applicant shall keep a copy of the Notice of Intent and shall prominently display this Notice of Intent as if it were a license or registration issued pursuant to Chapter 333, RSMo.

1 24 hours and getting a death certificate.

2 UNIDENTIFIED: That's a bad plan.

3 CHAIRMAN: Actually, a funeral director can

4 play that same game. He -- not just doctors. He

5 doesn't have to apply by the electronic system. He

6 can just drop it to paper and go on and just --

7 MR. OTTO: But you're going to have to be on

8 the electronic system to drop it to paper.

9 CHAIRMAN: Well, that's true.

10 MR. OTTO: I mean, you're going to have to

11 have a computer, you're going to have to have a log-in

12 name, and you're going to have to start the process.

13 CHAIRMAN: Why?

14 MR. OTTO: Because they're requiring it.

15 CHAIRMAN: Why? If you have to drop it to

16 paper, why can't you just fill out the old form, or

17 will they not produce the old forms any longer?

18 MR. OTTO: No. Yeah. Eventually, they won't

19 have them.

20 CHAIRMAN: Well, I've 10,000 of them in a file

21 drawer, so stock up now.

22 MR. OTTO: Yeah. Stock up now.

23 (Several people talking simultaneously.)

24 MS. DUNN: Connie, is Healing Arts going to

1 try to get this on their agenda in October?
2 MS. CLARKSTON: Yes, they are.
3 MS. DUNN: For open agenda?
4 MS. CLARKSTON: That's my understanding.
5 MS. DUNN: Okay. So, I will keep in touch
6 with Healing Arts and get that on our Web site and out
7 to everyone about Healing Arts talking about this at
8 their next open agenda.
9 CHAIRMAN: Okay.
10 MS. DUNN: Now, did somebody -- somebody
11 called me the other day and said -- and I haven't
12 talked to Ivra, that now they've realized they have to
13 have a statute change?
14 MR. OTTO: I heard that same conversation
15 probably from the same person.
16 MS. DUNN: Okay.
17 MR. OTTO: But I don't know. I mean, the
18 statute that created the electronic-death-certificate
19 system, such as it is, does not abrogate the Health
20 Department law that's currently on the books that says
21 within the first 24 hours, you can get a certified
22 copy from your local registrar or as designated by
23 them. So, how can she say as of January 1, you can't
24 do that anymore when the statute says you can? Good

1 question.

2 MS. DUNN: Okay.

3 CHAIRMAN: Anything else?

4 MS. DUNN: Housekeeping.

5 MS. EULER: I have nothing. I'm done.

6 CHAIRMAN: Okay.

7 MS. DUNN: Yeah. I am, too.

8 CHAIRMAN: So, just adjourn. Motion to

9 adjourn?

10 MR. MAHN: First.

11 MR. McCULLOCH: Second.

12 CHAIRMAN: Jim?

13 MR. REINHARD: Yes.

14 CHAIRMAN: All right. We are adjourned.

15 Thank you all. It's worse than going to the dentist.

16 (Off the record)

I, Kristy B. Bradshaw, a Certified Court Reporter in the State of Missouri, do hereby certify that the foregoing transcript constitutes a full, true and correct record of said proceedings that were held on August 5, 2009; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this _____ day of _____, 2009.

_____
KRISTY B. BRADSHAW, CCR

August 5

Board Meeting Addendum Working Documents

Date	File
DRAFT Notice of Intent for Licensure Registration Agent Seller Provider	PDF
Draft Emergency Rules SB 1 Implementation Group 1 Follow-up of August 5 Meeting	PDF
Draft - SB 1 Implementation Group I	PDF
Draft - Emergency Rules re Notice of Intent and Report	PDF

Public Comments

Date	File
Amy Battagler email August 5 2009 comments	PDF
Amy Battagler Stewart Enterprise Comments 8-5-09	PDF
Bill Stalter comments for August 5 2009 meeting	PDF

August 5

Board Meeting Addendum Working Documents

DRAFT Notice of Intent for Licensure Registration Agent Seller Provider

STATE OF MISSOURI
DIVISION OF PROFESSIONAL REGISTRATION

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
3605 MISSOURI BOULEVARD
P.O. BOX 423
JEFFERSON CITY, MO 65102
TELEPHONE (573) 751-0813
TTY (800) 735-2966

NOTICE OF INTENT TO APPLY FOR LICENSURE/REGISTRATION AGENT/SELLER/PROVIDER

FEE $

I HEREBY MAKE APPLICATION TO THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS, OF THE STATE OF MISSOURI, FOR LICENSURE/REGISTRATION UNDER THE LAWS OF THE STATE OF MISSOURI, AND SUBMIT THE FOLLOWING STATEMENTS:

FOR OFFICE USE ONLY

LICENSE NUMBER	DATE LICENSED
FEE RECEIVED	DATE DEPOSITED
R NO.	INITIALS

INSTRUCTIONS TO APPLICANT

Applicant must complete all applicable sections below. The proper fee, as set by the Board, shall accompany each application. Check or money order shall be made payable to the Missouri State Board of Embalmers and Funeral Directors.

(1) Any Applicant who has filed a Notice of Intent must file their completed application for licensure or registration with the Board no later than October 1, 2009.

(2) This authorization to practice shall be effective from the date the Board receives the Notice of Intent and shall end on the date the Board either issues a license or registration or denies the application for licensure/registration or until midnight December 31, 2009, whichever comes first.

If you have a disability and require accommodations addressed by the Americans with Disabilities Act, please notify this office at the time of application to insure that reasonable accommodations are made for your needs. Notification must be made in writing and mailed to the Missouri State Board of Embalmers and Funeral Directors, P.O. Box 423, Jefferson City, Missouri 65102. Notification of special needs must be received at least thirty (30) days in advance of any scheduled examination date. The text telephone number for the hearing impaired is [illegible]966.

PLEASE READ ALL CORRESPONDENCE THAT YOU RECEIVE FROM THE BOARD OFFICE, IT CONTAINS VERY IMPORTANT INFORMATION.

Please check the box indicating the type of license you are applying for:

☐ Preneed Agent
☐ Preneed Provider
☐ Preneed Seller

A. GENERAL INFORMATION

1. Last Name / Middle Name / Middle Name / Maiden Name if Applicable)		2. Social Security Number (Required)
3. Present Address (Street, City, State, Zip)		4. Telephone Number
5. Mailing Address (Street, City, State, Zip)		6. Email Address
7. County of Residence	8. Date of Birth	9.Gender

B. If a "YES" response is required for questions A through D, applicant must provide a written explanation on a separate sheet of paper with the applicant's signature notarized.

	Yes	No
a. Has your license ever been disciplined by that state or territory? If yes, explain fully.		
b. Have you ever 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 whether or not sentence was imposed (includes suspended imposition of sentence (SIS)). If yes, explain fully.		
c. Have you ever been arrested, charged with or found guilty, or entered a plea of guilty or nolo contendere of a violation of any federal, state or municipal, drug or alcohol laws or rules whether or not sentence was imposed (includes suspended imposition of sentence (SIS)). If yes, explain fully		

DRAFT

C. If this is a Corporation please complete this section:

Corporations Registered Agent:	Person in Charge of the Entity:

D. List Preneed Sellers/Providers Associated with the applicant: (If necessary you may attach additional documents may be attached)

Name of Licensee	Type of License (Provider/Seller)	Type of Funding Used	This section must be completed
	Provider ☐ Seller ☐	Trust ☐ Joint ☐ Insurance ☐	I hereby certify that I meet all statutory requirements to be eligible for licensure/registration ☐
	Provider ☐ Seller ☐	Trust ☐ Joint ☐ Insurance ☐	I hereby certify that I meet all statutory requirements to be eligible for licensure/registration ☐
	Provider ☐ Seller ☐	Trust ☐ Joint ☐ Insurance ☐	I hereby certify that I meet all statutory requirements to be eligible for licensure/registration ☐
	Provider ☐ Seller ☐	Trust ☐ Joint ☐ Insurance ☐	I hereby certify that I meet all statutory requirements to be eligible for licensure/registration ☐

E. Preneed Sellers must complete this section: (If necessary you may attach additional documents may be attached)

Type of Funding Used	Insurance Company(s)/ trustee(s) currently used	Address of Insurance Company(s)/ trustee(s)

F. AFFIDAVIT OF APPLICANT

I,_____, _____
(APPLICANT SIGNATURE) (PLEASE PRINT NAME)

being first duly sworn upon my oath, state as follows:

- That I have personally completed the foregoing application truthfully, completely, without omission;
- That all the information and answers contained in the foregoing application and any attachments thereto are true and correct to my best knowledge and belief; and
- That I realize that I made this affidavit knowingly and that any false statement or material omission herein subjects me to criminal penalties for making a false affidavit under Section 575.050, RSMo 2000, as supplemented.

G. NOTARY SECTION

STATE OF MISSOURI	COUNTY OF	NOTARY PUBLIC SEAL/STAMP
SUBSCRIBED AND SWORN TO BEFORE ME _____ DAY OF _____, 20____		
NOTARY PUBLIC SIGNATURE	COMMISSION EXPIRES	
NOTARY PUBLIC NAME (TYPED OR PRINTED)		

DRAFT

August 5

Board Meeting Addendum Working Documents

Draft Emergency Rules SB 1 Implementation Group 1 Follow-up of August 5 Meeting

Emergency rules for Group 1 following 8-5-09 meeting

Emergency rule: Corporation must be represented by an attorney

Title: Practice by a licensed attorney

Purpose: This rule states when and how a party must be represented by a licensed attorney in a matter involving a licensee or applicant of the Missouri State Board of Embalmers and Funeral Directors.

(1) Any individual may present that individual's own case without a licensed attorney in a before the Missouri State Board of Embalmers and Funeral Directors in which the individual is contesting a decision of the Missouri State Board of Embalmers and Funeral Directors regarding denial or discipline of a license.
(2) Any individual may file an initial complaint on behalf of another person, including a corporation or other legal entity in a matter involving a licensee or applicant of the Missouri State Board of Embalmers and Funeral Directors but any and all proceedings and filings following the filing of the initial complaint shall be conducted by a licensed attorney.
(3) Except as set forth in section (2) of this rule, only a licensed attorney may represent any other person, including a corporation or other legal entity in matters before the Board. The filing of any document in a matter involving a licensee or applicant of the Missouri State Board of Embalmers and Funeral Directors by a licensed attorney, **unless stated otherwise therein,** shall be deemed an entry of appearance. An attorney not authorized to practice in Missouri shall enter an appearance in accordance with Missouri Supreme Court Rules.

Comment [L1]: Earl raise the following: Could (1) and (2) be read more broadly than intended? Do we need (1) and (2) at all?

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Authorized by: 333.340 and 333.011(6)

Emergency rule: Payment is not determining factor of "practice of funeral directing"

Title: Practice of funeral directing; payment not determining factor

Purpose: This rule explains that the receiving of payment for providing funeral services is not the determining factor in identifying the practice of funeral directing.

(1) In determining whether a person, pursuant to 333.011(6), is engaging in the practice of funeral directing pursuant to 333.011(8), the Board shall consider all activities listed in 333.011(8).
(2) Receipt of payment by any person for any or all services provided pursuant to this Chapter or Chapter 436, RSMo shall not be a the determining factor

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in determining whether the person is engaging in the practice of funeral directing.

Authorized by: 333.340 and 333.011(8)

Emergency rule: Pre-need seller and agent must be licensed in Missouri

Title: Pre-need agent; requirements of agent's seller

Purpose: This rule explains that any licensed pre-need agent in the State of Missouri must be selling pre-need contracts on behalf of a seller who is also licensed in the state of Missouri.

(1) Any pre-need agent licensed by the Missouri State Board of Embalmers and Funeral Directors to sell a pre-need contract for or on behalf of a seller must be the agent of a seller who is licensed to sell pre-need contracts by the Missouri State Board of Embalmers and Funeral Directors.

Authorized by: 333.340, 333.011(9), 333.320 and 333.325

Emergency rule: "Final Disposition" as defined in Chapter 193

Title: Use of term "final disposition" consistent with Chapter 193, RSMo

Purpose: This rule explains that use of the term "final disposition" in Chapters 333 and 436, RSMo shall be consistent with the definition of the term in Chapter 193, RSMo.

(1) For purposes of Chapters 333 and 436, RSMo, final disposition shall be defined in accordance with the definition contained in Section 193.015(3), RSMo.
(2) Use of the term final disposition in Chapters 333 and 436 shall be consistent with its use in Chapter 193, RSMo.

Authorized by: 333.340 and 333.011(10)

Emergency rule: "Provider" includes funeral establishment that has agreed to undertake obligations of pre-need contracts pursuant to Chapter 436

Title: Provider to include funeral establishments engaged in pre-need

Purpose: This rule explains that a provider in a pre-need contract includes, but is not limited to, a funeral establishment that has agreed to undertake the obligations of a pre-need contract under Chapter 436, RSMo.

(1) As defined by Section 333.011(10), the provider of services under any pre-need contract pursuant to Chapter 436, RSMo shall include any licensed funeral establishment that has agreed to undertake the obligations of a pre-need contract pursuant to Chapter 436, RSMo.
(2) And provider who is a licensed funeral established~~ed~~ment who has agreed to undertake the obligations of a pre-need contract pursuant to Chapter 436, RSMo, must meet all requirements of both a licensed funeral establishment and a pre-need provider pursuant to Chapters 333 and 436, RSMo.

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Authorized by 333.340 and 333.011(10), RSMo

Emergency rule: Display of License

Title: Licenses issued by the Missouri State Board of Embalmers and Funeral Directors must be displayed.

Purpose: This rule states that licensed establishments, funeral directors, embalmers, pre-need sellers, agents and providers must prominently display their license to practice issued by the Missouri State Board of Embalmers and Funeral Directors.

(1) All licenses, and any and all duplicate copies thereof, issued by the Missouri State Board of Embalmers and Funeral Directors shall be prominently displayed at all times in a conspicuous location or manner easily accessible to the public for each office or place of business of the licensee.
(2) All licenses shall be available at all times for inspection by any duly authorized agent of the Missouri State Board of Embalmers and Funeral Directors.
(3) The Missouri State Board of Embalmers and Funeral Directors may cause a complaint to be filed with the Administrative Hearing Commission pursuant to Section 333.330, RSMo, for the failure of a licensee to display his or her license as required by Section 333.091 and this regulation.

Comment [L2]: Do we need to include registrations in this too?

Authorized by 333.340, 333.091 and 333.330

Emergency rule: Corporate ownership of a corporate licensee

Title: Corporate ownership of a corporation holding a pre-need provider license.

Purpose: This rule prescribes the requirements regarding corporate ownership of a corporation that holds a pre-need provider license.

(1) If the applicant for a pre-need provider license pursuant to Section 333.315, RSMo is a corporation or other legal entity, referred to as "applicant corporation" and it is owned by a corporation, referred to as "owner corporation":

(a) each owner, director, manager or controlling shareholder of the applicant corporation shall be eligible for licensure as if they were applying for licensure as an individual; and

(b) at least one owner, director, manager or controlling shareholder of the owner corporation shall be eligible for licensure as if they were applying for licensure as an individual.

Authority: 333.340 and 333.315

*** A compromise. It is my understanding that during the process of developing this legislation, the board's concern was for the management of the "applicant corporation" to be eligible for licensure but not the "owner corporation." It is also my understanding that the board did not express an opinion one way or the other during discussion of this issue. My thinking here is I think it would be very wise to have at least one person in management at the owner corporation who has knowledge and experience in the business.

Emergency rule: Licensees must file application for new license if change in ownership.

Title: New license required for change of ownership

Purpose: This rule states that a new license is required for a change in ownership of a pre-need seller.

(1) The pre-need seller license issued by the board is effective for a specific name of a person or entity authorized to conduct business in Missouri. The license issued by the board shall be displayed in a conspicuous location accessible to the general public at that location. Whenever the ownership, location or name of the Missouri licensed pre-need seller is changed, a new license shall be obtained.

(A) If a change of ownership is caused by the elimination of one (1) or more owners, for whatever reason (death, sale of interest, divorce, etc.) without the addition of any new owner(s), it is not necessary to obtain a

new pre-need seller license. However, a new application for a pre-need seller license form shall be filed as an amended application within thirty (30) days after the change of ownership. This form shall be filled out completely with correct, current information.

(B) A corporation is considered by law to be a separate person. If a corporation holds a Missouri pre-need seller's license, it is not necessary to obtain a new pre-need seller license or to file an amended application for a pre-need seller license if the owners of a minority interest in the stock change. However, as a separate person, if the corporation begins ownership of an entity which holds a Missouri pre-need seller license or ceases ownership of an entity which holds a Missouri pre-need seller license, a new pre-need seller license shall be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

Comment [L3]: Do we need to say if a majority interest changes, then a new license is required?

Authority: 333.340 and 333.320

Emergency rule: Failure to renew a license within 2 years requires completion of application process

Title: Failure to renew a license within 2 years; process required.

Purpose: This rule describes the process for a licensee who fails to renew his or her license within 2 years.

(1) Any pre-need seller issued a license pursuant to Section 333.320, RSMo shall renew his or her license biennially and meet all requirements established pursuant to Section 333.320, RSMo;
(2) Any pre-need seller shall be issued a new license by the board within two years of the renewal date upon completion of all renewal requirements contained in Section 333.320 and payment of appropriate fees set by the Board.
(3) Any pre-need seller license not renewed within two years **of the date of renewal** shall be void.
(4) Any pre-need seller whose license becomes void for failure to renew within two years of the renewal date who wishes to be licensed by the board must file a new application and meet all requirements of a new application pursuant to Section 333.320 and any corresponding validly promulgated rules of the board.

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Authority: Section 333.340 and 333.320

**** concern: This seems inconsistent with 333.320.4, RSMo.*

Emergency rule: Licensed funeral director must report each seller for whom he or she is an agent.

Title: Funeral Director agent registration

Purpose: This rule establishes the reporting requirement for any funeral directors serving as sellers' agents.

(1) Any funeral director acting as a pre-need agent shall report the name and address of each pre-need seller for whom the funeral director is authorized to sell, negotiate, or solicit pre-need contracts to the Board on a form prescribed by the Board.
(2) Any funeral director shall also identify him or herself as acting as a pre-need agent on his or her biennial report form to the board by checking the appropriate box on the form prescribed by the board.

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Authority: Section 333.340 and 333.325.4

Emergency rule: Pre-need agents must take Missouri law exam.

Title: Certifying pre-need seller agents to take the Missouri law exam.

Purpose: This rule prescribes the process for certifying pre-need seller agents to take the Missouri law exam and a requirement for licensure.

(1) All pre-need seller agents applying for licensure with the board shall achieve a grade of seventy-five percent (75%) or greater on the Missouri Law exam. Successful completion of the Law exam shall be a prerequisite to licensure. This exam may be taken any time after filing the Notice of Intent to Apply. Pre-need agent applicants must successfully complete the Missouri Law exam on or before December 31, 2009, prior to the expiration of the Notice of Intent to Apply. The Missouri Law exam covers knowledge of Chapter 333, RSMo and the rules governing the practice of embalming, funeral directing and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition and transportation of dead human bodies. The Missouri Law section also contains questions regarding Chapter 436, RSMo relating to pre-need statutes and Chapters 193 and 194, RSMo relating to the Missouri Department of Health and Senior Services statutes, as well as questions regarding Federal Trade Commission rules and regulations and Occupational Safety and Health Administration (OSHA) requirements

as they apply to Missouri licensees. Notification of intent to take this examination shall be received by the board at least fifteen (15) working days prior to the date the candidate plans to sit for the examination.

Authority: 333.340 and 333.325.5

Emergency rule: Normal market fluctuation resulting in a shortage in a pre-need trust is not a basis for injunctive relief.

Title: Normal market fluctuation is not a basis for injunctive relief.

Purpose: This rule provides that normal market fluctuation that result in a shortage to a pre-need trust or joint account do not constitute cause to seek an injunction against a seller of a pre-need contract.

(1) Pursuant to Section 333.330.4, RSMo, the Missouri Board of Embalmers and Funeral Directors shall not be entitled to seek injunctive relief against a seller of a pre-need trust if there is a shortage greater than twenty percent of the total amount required to be held or deposited into the trust or joint account pursuant to Chapter 436 in the pre-need trust or joint account that is exclusively the result of normal fluctuations in the market.

Authority: Section 333.340 and 333.330

Emergency rule: Financial welfare cause for injunction

Title: Danger to financial welfare is cause for injunction.

Purpose: This rule states that serious danger to an individual's financial welfare is cause for the State Board of Embalmers and Funeral Directors to seek an injunction pursuant to Section 333.335.1(2), RSMo.

(1) For purposes of Section 333.335, RSMo, the Missouri State Board of Embalmers and Funeral Directors shall be entitled to seek injunctive relief against any person from engaging in any business or practice authorized by a registration or authority, permit, or license issued under this chapter that 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 registrant.
(2) For purposes of Section 333.335, RSMo, serious danger to the welfare of any resident or client or customer shall include, but is not limited to, the financial welfare of the resident, client or customer.

Authority: Section 333.340 and 333.335.

August 5

Board Meeting Addendum Working Documents

Draft - SB 1 Implementation Group I

Group I

Potential need for rules – see comments

Comment [K1]: See comments in comment boxes and at the end of some sections. Comments were compiled from multiple sources. Comments are included to promote thought and discussion toward the implementation of SB1 by the board. Decisions regarding implementation will be made by the board.
Comments not tied directly to one section are included at the end.

SENATE BILL NO. 1
95TH GENERAL ASSEMBLY
2009
0404L.09T
AN ACT
To repeal sections 333.011, 333.091, 333.101, 333.121, 333.151, 333.221, 333.241, 333.251, 436.005, 436.007, 436.011, 436.015, 436.021, 436.027, 436.031, 436.035, 436.038, 436.041, 436.045, 436.048, 436.051, 436.053, 436.055, 436.061, 436.063, 436.065, 436.067, 436.069, and 436.071, RSMo, and to enact in lieu thereof forty new sections relating to preneed funeral contracts, with penalty provisions.
Be it enacted by the General Assembly of the State of Missouri, as follows:
Section A. Sections 333.011, 333.091, 333.101, 333.121, 333.151, 333.221,
2 333.241, 333.251, 436.005, 436.007, 436.011, 436.015, 436.021, 436.027, 436.031,
3 436.035, 436.038, 436.041, 436.045, 436.048, 436.051, 436.053, 436.055, 436.061,
4 436.063, 436.065, 436.067, 436.069, and 436.071, RSMo, are repealed and forty
5 new sections enacted in lieu thereof, to be known as sections 333.011, 333.091,
6 333.101, 333.151, 333.221, 333.251, 333.310, 333.315, 333.320, 333.325, 333.330,
7 333.335, 333.340, 436.400, 436.405, 436.410, 436.412, 436.415, 436.420, 436.425,
8 436.430, 436.435, 436.440, 436.445, 436.450, 436.455, 436.456, 436.457, 436.458,
9 436.460, 436.465, 436.470, 436.480, 436.485, 436.490, 436.500, 436.505, 436.510,
10 436.520, and 1, to read as follows:

333.011. Definitions

1. As used in this chapter, unless the context requires otherwise,
2 the following terms have the meanings indicated:

3 (1) "Board", the state board of embalmers and funeral directors created
4 by this chapter;

5 (2) "Embalmer", any individual licensed to engage in the practice of
6 embalming;

7 (3) "Funeral director", any individual licensed to engage in the practice
8 of funeral directing;

9 (4) "Funeral establishment", a building, place, crematory, or premises
10 devoted to or used in the care and preparation for burial or transportation of the
11 human dead and includes every building, place or premises maintained for that
12 purpose or held out to the public by advertising or otherwise to be used for that
13 purpose;

14 (5) **"Funeral merchandise", caskets, grave vaults, receptacles, and**
15 **other personal property incidental to the final disposition of a dead**
16 **human body, including, grave markers, monuments, tombstones, and**
17 **urns;**

18 (6) "Person" [includes a corporation, partnership or other type of business
19 organization], **any individual, partnership, corporation, cooperative,**
20 **association, or other entity;**

21 [(6)] (7) "Practice of embalming", the work of preserving, disinfecting and
22 preparing by arterial embalming, including the chemical preparation of a dead
23 human body for disposition. Practice of embalming includes all activities leading
24 up to and including arterial and cavity embalming, including but not limited to
25 raising of vessels and suturing of incisions of dead human bodies for funeral
26 services, transportation, burial or cremation, or the holding of oneself out as
27 being engaged in such work;

28 [(7)] (8) "Practice of funeral directing", engaging by an individual in the
29 business of preparing, otherwise than by embalming, for the burial, disposal or
30 transportation out of this state of, and the directing and supervising of the burial
31 or disposal of, dead human bodies or engaging in the general control, supervision
32 or management of the operations of a funeral establishment;

33 (9) **"Preneed agent", any person authorized to sell a preneed**

Comment [K2]: May want to define what this means – in that it includes (specific examples) but is not limited to those specific examples.

Comment [K3]: May want to set out somewhere in rule that a corporation must be represented by an attorney (not just officer, owner, etc.)

Comment [K4]: This board's rules have addressed this in the past (but don't currently). May want to define that determining factor is not whether receiving payment or not.

Comment [K5]: May want to clarify by rule that preneed agent's seller must also be licensed in Mo.

34 contract for or on behalf of a seller;

35 (10) "Provider", the person designated or obligated to provide the
36 final disposition, funeral, or burial services or facilities, or funeral
37 merchandise described in a preneed contract;

38 (11) "Seller", the person who executes a preneed contract with a
39 purchaser and who is obligated under such preneed contract to remit
40 payment to the provider.

41 2. All terms defined in sections 436.400 to 436.520, RSMo, shall be
42 deemed to have the same meaning when used in this chapter.

Comment [K6]: Set out whether every licensed funeral director is a "provider"? (and must pay the fee?)

Comment [K7]: Could define any or all of these terms – with some examples

Comment [K8]: Seller must use agent registered in Mo

333.091. License must be displayed and recorded

Each establishment, funeral director or embalmer receiving a
2 license under this chapter shall have [the] recorded in the office of the local
3 registrar of vital statistics of the registration district in which the licensee
4 practices. [The licenses or duplicates shall be displayed in the office(s) or place(s)
5 of business.] **All licenses or registrations, or duplicates thereof, issued**
6 **pursuant to this chapter shall be displayed at each place of business.**

Comment [K9]: May want to explain in rule how must be displayed, where when, etc.
Also address here or elsewhere whether expiration date is on face of license

Comment [K10]: Related reg – 20 CSR 2120-2.030, (p. 29 in board booklet)

Do new death certificate rules change any of this?

333.101. Board may enter premises to inspect

The board or any member thereof or any agent duly authorized
2 by it may enter the office, premises, establishment or place of business of any
3 [funeral service licensee in this state] licensee or registrant, or any office,
4 premises, establishment or place where the practice of funeral directing [or],
5 embalming, preneed selling or providing is carried on, or where such practice
6 is advertised as being carried on for the purpose of inspecting said office,
7 premises or establishment and for the purpose of inspecting the license and
8 registration of any licensee or registrant and the manner and scope of training
9 given by the licensee or registrant to the [intern] apprentice operating
10 therein.

Comment [K11]: May want to clarify that this includes any place where records are stored, regardless of format (including electronic). May also want to address consent to access off-site locations where files may be stored and that employees of licensee or registrant may allow access. May want to set out timeframe of some kind within which access must be granted

333.151. Board membership and appointment

1. The state board of embalmers and funeral directors shall
2 consist of [six] **ten** members, including one voting public member[,] appointed by
3 the governor with the advice and consent of the senate. Each member, other than
4 the public member, appointed shall possess either a license to practice embalming
5 or a license to practice funeral directing in this state or both said licenses and
6 shall have been actively engaged in the practice of embalming or funeral directing
7 for a period of five years next before his or her appointment. Each member shall
8 be a United States citizen, a resident of this state for a period of at least one
9 year, a qualified voter of this state and shall be of good moral character. Not
10 more than [three] **five** members of the board shall be of the same political party.
11 [The president of the Missouri Funeral Directors Association in office at the time
12 shall each, at least ninety days prior to the expiration of the term of a board
13 member, other than the public member, or as soon as feasible after a vacancy on
14 the board otherwise occurs, submit to the director of the division of professional
15 registration a list of five persons qualified and willing to fill the vacancy in
16 question, with the request and recommendation that the governor appoint one of
17 the five persons so listed, and with the list so submitted, the president of the
18 Missouri Funeral Directors Association shall each include in his or her letter of
19 transmittal a description of the method by which the names were chosen by that
20 association.] **The non-public members shall be appointed by the**
21 **Governor, with the advice and consent of the senate, one from each of**
22 **the state's congressional districts be of good moral character and**
23 **submit an audited financial statement of their funeral establishment by**
24 **an independent auditor for the previous five years. This audited**
25 **financial statement must include all at-need and preneed business.**

26 2. Each member of the board shall serve for a term of five years. Any
27 vacancy on the board shall be filled by the governor and the person appointed to
28 fill the vacancy shall possess the qualifications required by this chapter and shall
29 serve until the end of the unexpired term of his or her predecessor, **if any.**
30 3. The public member shall be at the time of his or her appointment a
31 person who is not and never was a member of any profession licensed or regulated
32 pursuant to this chapter or the spouse of such person; and a person who does not
33 have and never has had a material, financial interest in either the providing of
34 the professional services regulated by this chapter, or an activity or organization
35 directly related to any profession licensed or regulated pursuant to this chapter.
36 All members, including public members, shall be chosen from lists submitted by
37 the director of the division of professional registration. The duties of the public
38 member shall not include the determination of the technical requirements to be
39 met for licensure or whether any person meets such technical requirements or of
40 the technical competence or technical judgment of a licensee or a candidate for
41 licensure.

Comment [K12]: What proof will be required regarding citizenship, residency, voter status and moral character?

Comment [K13]: What about overlap of board members currently on the board?

Comment [K14]: If do rules on this section, may consider addressing:
- define audited financial statement,
- set out timeframes
- alternatives if any deemed to be financial statement
- explain how one per district will work
- define "technical requirements"